Supreme Court, U. S.
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APPENDIX
VOLUME III

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-853

UNITED STATES STEEL CORPORATION,
et al. - - - - - - - - - Petitioners

v.

FORTNER ENTERPRISES, INC. - Respondent

On Writ of Certiorari to the United States Court
of Appeals For the Sixth Circuit

PETITION FOR CERTIORARI FILED DECEMBER 18, 1975
CERTIORARI GRANTED FEBRUARY 23, 1976

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Q. What were some of the sources from which your evaluation and analysis tells you that the funds would have been available to Mr. Fortner during that time?

Mr. Anderson: Objection again, Your Honor.

By the Court: You may have

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a continuing objection.

Mr. Anderson: All right. I would like to state, if the Court please, this, uh, is not particularly a subject to any alleged expert testimony in the nature of this gentlemen and the type of evidence which he is about to give is based on hearsay and we want to particularly point that out as a part of our objection.

By the Court: All right.

Q. What were some of the sources from which you believed such funds, financing, could have been obtained?

A. So, that—the sources on which my opinion is based was, for the one hundred per cent mortgage financing, was provided by savings and loan associations, by real estate syndicates, by joint ventures, by the suppliers of materials that went into construction, by subcontractors and by individuals.

Q. Now, in the assumption you are operating under, which was a direct loan from the Credit Corporation of the United States Steel to the Fortner Enterprises Incorporated, could you tell us if in Louisville—in the Louisville area generally at that time, there were other techniques besides the direct loan which

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could have been utilized to afford similar financing to that obtained by the Fortner Enterprises?

A. Yes sir; occasionally a materials supplier himself will secure a loan from a bank and make that loan available to a particular developer so that he can get started.

Q. Were there other techniques that were used?

A. Yes sir; there were such techniques as, a particular land owner, uh, desiring to sell his particular land, subsequently to be used for development as selling upon the basis of what we call a purchase-money mortgage which would be that no down payment would have to be required from the developer and what would be the hold, as a loan, so to speak from the particular land owner, and would be secured by mortgage on that particular property.

Q. Briefly, tell us any other techniques which could have been utilized?

A. Another technique which I did not find utilized in the Louisville area and so, perhaps this is just academic, is the technique of the use of land contracts, under which a particular land owner will sell his land, so to speak, on the installment plan,

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but not requiring at the particular time any down payment from the particular developer.

Then, there are other techniques which we call a lend and release, in which the particular land owner will lease for a nominal amount to the particular developer the property and then as the developer sells the individual lots on the property and receives the proceeds from them, uh, then the land owner who is a lessor will release these lots in the form of the deeds to the people who were committed to buy these particular lots.

Another technique which would not require any disbursement of funds on the part of the developer would be a particular land owner giving the developer an option to buy which the particular developer wouldn't exercise and actually buy until he had the commitments in hand from the sale of the particular lots.

Q. Now, let's for the moment, Mr. Pearson, assume that the contention of the Fortner Enterprises is correct;

that the financing which we have discussed and which I have described, or something similar to it was difficult to obtain or that Mr. Fortner or his Corporation couldn't locate it.

Bearing in mind the arrangement which you have

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outlined do you have an opinion as to its effect on the real estate market generally?

A. Yes sir; I do.

Q. What is your opinion in that regard?

Mr. Anderson: Again, may we have an objection to this question, Your Honor; I don't think the man is qualified to answer.

By the Court: So ordered.

Q. You may give your opinion.

A. My opinion was that because of the credit arrangements which were made available to Mr. Fortner, and additionally, uh, that this had the result so to speak of broadening the activity base of Mr. Fortner so that he could compete by means of this particular development, this Golden Meadows Subdivision which he hadn't been able to compete in before because this particular credit arrangement was not available to him and Mr. Fortner and his staff therefore were now able to engage in the competition in the sale of lots in this particular development.

Also, this is—sort of touches only my case, very much concerned about the housing shortage—that seems to be also that is an opportunity to try to introduce into the Louisville area on a large scale,

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thanks to Mr. Fortner, such items as prefabs, and lately we see them more in the form of modular housing and the sectional housing, which hadn't in the Louisville area, evidently, before been very much received and basically, this

is just about the only way to beat hight construction costs and to make homes more available to the people in the area and he, because of this credit arrangement, this particular opportunity to make this type of housing and to get into the competitive act in the sale and production of housing in the Louisville areas, as having a very salutary effect upon the market.

Q. Would this arrangement, in your opinion, have any effect on the credit on money market as related to real estate transactions?

A. Yes sir; it would; subsequent to U. S. Steel Credit's arrangement with Mr. Fortner there were other concerns in the Louisville area which had not as yet engaged in the one hundred per cent financing, but due to the fact that U. S. Steel made this credit arrangement with Mr. Fortner and made it available as a one hundred per cent mortgage financing, other companies, other concerns like the Louisville Mortgage Service Company got into the act and likewise made it

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available and with credit thus being easier to obtain and credit being less costly, this would have a salutary effect upon the market for homes and easier financing would be made available for prospective purchasers.

Q. Do you believe the arrangement we have been discussing had any adverse effect upon the competitive real estate market?

A. No sir; I don't; instead, Plaintiff, Mr. Fortner, not being able to engage in these activities in the Golden Meadows Subdivision area, now he was, so we have a competitor, or at least extending his base of operations to an area that he was not in before and the particular arrangement didn't tie anyone down.

There is no patent on money. There is no copyright on

money and Mr. Fortner was perfectly free to engage in any other type of building or developing activities in the Louisville area with exception of the fifty-five acres that had been purchased with the U. S. Steel money.

He could get out of the arrangement at any time he so desired by paying off the obligations that he owed to U. S. Steel.

There wasn't any foreclosure of buyers choices

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with regard to the purchase of lots and houses in the area. In fact, other choices were made available to them by reason of the provision of this Golden Meadows Subdivision.

Mr. Anderson: May it please the Court; we move to strike the last answer as being a series of legal conclusions on this gentleman's part which he is not qualified to make and which is invading the province of the jury and the Court in this case.

Mr. Reutlinger: Your Honor, I understood the witness to say that he has been educated in law and is licensed; this does not necessarily mean that his conclusions are binding; this is an opinion only.

By the Court: Well, ladies and gentlemen; this gentleman has been qualified here as an expert and of course, his opinion is just what he says it is; it is his opinion and in the law, we do not generally allow witnesses to merely give their opinions about things, but we do make an exception with experts.

They are men who, by their training and experience purport to possess some special knowledge about the matters and we allow them to give their opinion,

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however, the jury is not bound by the opinion of any expert.

It may accept it or it may totally disregard it if it feels it is not based upon adequate knowledge or investigation

or study and as far as opinions about legal matters are concerned, the jury will get the law from the Court at the proper time when I instruct the jury and therefore, you will accept the evidence of all experts in this case in line with what I have just said to you.

Q. Directing your attention now, Mr. Pearson, to the Golden Meadows Subdivision itself, did you in the recent past personally visit it?

A. Yes sir; when I was here on April 10th I visited the Golden Meadows Subdivision.

Q. Now, you may assume for purposes of your answer to some of the questions I am about to ask you that most, if not almost every U.S. Steel home that you viewed was F.H.A. insured.

I suspect that one or two were conventional—conventionally financed and first, with that assumption that the F.H.A. had approved most, or certainly a very substantial number of these homes, tell us the procedure required to obtain ultimate F.H.A. approval,

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just briefly.

A. So, in order to obtain Federal Housing Administration approval, for the loan that is insures, the plans and specifications for the particular property must meet with the approval of the Federal Housing Administration.

Likewise, in the course of construction, representatives of the Federal Housing Administration go and look at the property to see whether what is being constructed is being constructed in accordance with the plans and specifications which the F.H.A. has approved.

Q. How many times have these—are these inspections made during the course of—

A. (Interrupting) Usually three.

Q. Did you, in the course of this inspection, pay particular attention to an area known as Lelia Court?

A. Yes sir; I did.

Q. You may assume for the purposes of your answer that this was entirely developed with the United States Steel homes.

A. (Witness nodded head affirmatively.)

Q. Now, based on your inspection—first,

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tell the Court how you made that survey?

A. And so, I made the survey by driving around very, very slowly in Mr. Reutlinger's car. So, therefore, this was an exterior inspection, not an interior inspection.

Naturally, I sort of hesitated to go inside people's homes that you just didn't know offhand and we looked at every single house from the outside and we looked at how well it was kept up and how well the lawns were kept up and whether this particular showed on the part of the particular family a pride of ownership, whether the outside was kept nicely painted, whether the homes looked neat and certainly, the homes were very nice, which you might call moderate-income type homes; well maintained, showing from the outside a pride of ownership, taking good care of the lawns, and the shrubbery and certainly recommending the people—people who lived there as having sort of a pride in these particular homes.

Q. Based on your observations that you just testified to, were you able to form a general opinion as to the appearance and reputation of the subdivision?

Mr. Anderson: Objection, Your Honor; he couldn't possibly know that from what

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he's told us.

By the Court: Yes sir; I'm going to sustain that.

Mr. Reutlinger: All right sir.

Q. Did you also in connection with the Golden Meadows Subdivision review a report from the Louisville Title In-

surance Company on some sixty-odd transactions or lack of transactions, if that was the case?

A. (Witness nodded head affirmatively.)

Q. Involving ownership of lots in Golden Meadows stemming from U.S. Steel homes?

A. Yes sir; I did. This investigation which the Title Company in Louisville made had to do with sixty-four of these properties.

Mr. Anderson: May it please the Court; we haven't seen that. That's the first we have heard of it. We know nothing about it and object to any testimony about it.

Mr. Reutlinger: We are not going to offer it as an exhibit; go ahead.

By the Court: Overruled.

Mr. Anderson: I don't know what the man is talking about, Your Honor.

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Mr. Reutlinger: It is a matter of public record, but that is beside the point.

Q. Go ahead.

A. Uh, so, there were sixty-four properties that were the basis of this investigation by this local title company. In the case of thirty-five of them, these thirty-five properties remained still in the hands of the original people, the original families who bought these properties.

In the case of twenty-nine of these properties, twenty-nine of these properties had been sold and considering this period during which they were held was from 1961 to 1967, that would be an average say of about one family out of every nine in this area moving every year which contrasts with the national average of only about one family out of every five moves every year and with regard to these twenty-nine that had been sold there were tax stamps on fifteen of them which indicated the sale price,

and out of the fifteen sales there were eleven of them on the basis of these tax stamps which indicated that these properties had sold for more than the original payment for them had been.

In the case of four of the properties they sold for less, but the amount that they sold for less

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were relatively small.

Q. What is the significance to you of the percentage of homes that remained with the original owners?

A. The indication of this to me is that the people who kept on owning these homes and kept on living in these homes, that they must have been reasonably well satisfied with them.

Mr. Anderson: I will have to object to that as a conclusion, Your Honor, and move to strike.

By the Court: Well, overruled; the jury understands that that is his opinion, what he concluded about it. They are not bound by that unless you want to be.

Mr. Reutlinger: That's all, Mr. Pearson; Mr. Anderson will ask you.

Cross-examination

By Mr. Anderson:

Q. We have had a degree of inflation since 1961, haven't we, Mr. Pearson?

A. Uh, that we have.

Q. That degree of inflation has caused any-

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thing that is sold to go up in later years?

A. I wouldn't say, Mr. Anderson, that it caused anything that has sold to go up in later years.

Q. You wouldn't say that?

A. No. So, the fact that we have inflation doesn't mean that everything goes up.

For example, how about these acres of abandoned buildings in Brooklyn; nobody wants them; they certainly haven't gone up in price over the last nine years.

Q. We are not concerned about what happens in Brooklyn, Mr. Pearson; we are concerned about what happens in Louisville, Kentucky.

A. I appreciate that, but I think your remark or your question was directed to me generally that everything has gone up in the last nine years.

Q. Now, you have never lived in Louisville or Jefferson County, Kentucky?

A. I beg your pardon, sir?

Q. You have never lived in Louisville or Jefferson County, Kentucky?

A. I have not lived in Louisville. I have not lived in Jefferson County, Kentucky. I have had a lot of fun coming down here in the case of, uh, the

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horse fairs and the races.

Q. Un-huh; and you have made three visits, three one-day visits down here to Louisville?

A. That is correct, sir.

Q. And went around and talked to some people?

A. Yes sir.

Q. And these visits were in 1970?

A. 1970, right, sir.

Q. And you of course don't know anything about the defective character of the interior components of these houses at Golden Meadows, do you?

A. I don't.

Q. You didn't look inside the houses?

A. I did not look inside the houses.

Q. You couldn't possibly know anything about that, could you sir?

A. I did not look inside the houses.

Q. All right. Mr. Reutlinger employed you to testify as a professional witness in this case?

A. That is correct, sir.

Q. And you came down here and got in the car with Mr. Reutlinger and he drove you out to the subdivision?

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A. That is correct, sir.

Q. He drove you around very slowly?

A. Uh-huh.

Q. And through that one street that you told us about, or did you drive through the whole subdivision?

A. Well, we drove around the entire subdivision, but we paid particular attention to this one specific area.

Q. All right. Now, if you drove around the whole subdivision you noticed that there were about two hundred —I mean—sorry; four hundred fifty to seventy-five houses in the entire subdivision, didn't you?

A. Uh, I don't know the number, sir.

Q. It was quite a substantial—more than two hundred, wasn't it, sir, or did you pay any attention to that?

A. Oh, I paid attention to it, sir.

Q. Well, it was over two hundred, wasn't it?

A. I didn't count them, sir.

Q. As many as four hundred?

A. I didn't count them.

Q. So, you didn't pay any attention to the

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construction of the conventionally-built homes out there?

A. I observed them.

Q. You observed them?

A. Yes sir.

Q. Now, this Lelia Court that you looked at, these were stone or brick exterior, weren't they?

A. Yes sir.

Q. Were you aware of the fact that this was a going subdivision at the time of the transaction with the Credit Corporation?

A. I was not, sir.

Q. You weren't aware of the fact that between two hundred and two hundred homes had already built in this subdivision at the time of the transaction with United States Steel Homes Credit Corporation?

A. No sir; I wasn't.

Q. And that houses of the conventional nature had been built up there and that the subdivision was an established subdivision; you weren't told those fact, were you?

A. I may have been told; if so, I just didn't—I don't remember.

Q. All right; and if this was a going sub-

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division, uh, then the transaction with Fortner Enterprises was merely a means of completing what was already a going project; is that correct?

A. I don't know, sir.

Q. Well, if we assume that two hundred to two hundred fifty homes had already been built in this subdivision—

Mr. Reutlinger: (Interrupting) Now, if Your Honor please, the hypothetical question should be properly stated because there is nothing in the record that indicates Fortner Enterprises had built the two hundred homes in the subdivision so if we set the stage properly, then the question can be answered properly.

By the Court: All right; rephrase your question.

Q. If we assume that builders had built two hundred to two hundred fifty homes in this subdivision including a few by Mr. Fortner personally, uh, some by—and the remainder by other builders, then this was a going proposition at the time U. S. Steel's transaction was entered into, wasn't it?

A. If we could assume that.

Q. All right. Now, Mr. Pearson, it's quite

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common in subdivision developing circles to, uh, for a developer and/or builder or developer combined to set up a new corporation each development or subdivision that he goes into, isn't it?

A. That is true, sir.

Q. And if a man has a development, let's say in one portion of Jefferson County which is under one corporation and a development in another portion of Jefferson County put in the name of a second corporation, the second corporation which is formed for the new subdivision isn't a new competitor, necessarily then in the market, is it?

A. Well, as an entity it is a new competitor.

Q. All right. Now, can you tell us when you made your survey or your ride through the Golden Meadows if you saw other prefabricated homes besides those made by the United States Steel Corporation?

A. I don't recall seeing others; no sir.

Q. You don't think there were any?

A. Uh, I can't think because I don't recall.

Q. Mr. Pearson, when you made this so-called survey in 1970 on the financing available?

A. Right.

Q. What rates of interest and other terms

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and conditions did these people that you said you talked to tell you they would have charged for financing in 1959 and 1960 and 1961?

A. Uh, they did not give me, Mr. Anderson, specific

rates of interest. They said when they gave me these facts that there were situations which the usual, uh, conventional rate of interest were applicable.

Q. Did you inquire if they required personal guarantees of the principal stockholders of the corporation that might be borrowing the money?

A. In some instances, sir, co-signers were required in a few instances.

Q. In a few instances?

A. Yes sir.

Q. Did you put your question to these people on the assumption that the corporation which had borrowed the money had a deficit at the time the borrowing took place?

A. No, it's—the way I put my question was this; I said that, uh, I was interested in trying to find out whether during the years of 1959, 1960 and 1961 financing was available in the Louisville area on the basis comparable with that which was given to

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Mr. Fortner.

Q. Well, you didn't know the basis that it was given Mr. Fortner then, did you?

A. Yes sir; the basis which the financing was given to Mr. Fortner, uh, was that the land acquisition and development were financed evidently one hundred per cent and that so far as the construction was concerned, you take a totality of eighty-five per cent of the fair market value of the property and from that you would subtract what had been advanced to Mr. Fortner for land acquisition and development and the net was the amount of financing.

Q. And you didn't use though, the terms, nor the fact that Fortner Enterprises was in a deficit position then, did you?

A. No sir.

Q. Do you know who furnished the brick and the stone for the outside of the U.S. Steel houses that you looked at out in Golden Meadows?

A. No sir; I don't.

Q. You don't really know anything about this transaction other than what you have been told by Mr. Reutlinger?

A. Uh, I think that is an incorrect statement,

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sir.

Mr. Anderson: I think that's all.

Mr. Reutlinger: No further questions.

By the Court: You may stand aside.

Mr. Reutlinger: We will have Mr. Black.

MR. HARRY R. BLACK, called as a witness, by the Defendants, having been first duly sworn, was examined and testified as follows, to-wit:

Direct Examination

By Mr. Reutlinger:

Q. State your name.

A. Harry R. Black.

Q. Where do you live, Mr. Black?

A. 2523 Glenwood Park, New Albany, Indiana.

Q. And at the present time you are an employee of the United States Steel Corporation with the Homes Division?

A. Yes sir; I am.

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Q. And how long have you been so employed in one capacity or another?

A. Since 1952.

Q. And very briefly, tell us what you have done during the course of that time for the Homes Division?

A. I was originally offered the position of Assistant

to the President of Homes Division in 1952. In 1953 I was transferred to New York for further training in their Treasury Department.

In the latter part of 1953 I was appointed Vice-President and Treasurer of the Homes Division, which at that time was U.S. Steel Homes Incorporated.

In 1954 I was given the responsibility of setting up and hiring personnel to set up the New Albany office of U.S. Steel Homes Credit Corporation.

In 1957 I was transferred back to the Homes Division as General Manager of Sales.

In 1959 I was appointed as Vice-President of Sales. In 1963 I was appointed Vice-President of Operations, which is my present position.

Q. During the period then of 1959 to 1962 which is the Golden Meadows, you were Vice-President in Charge of Sales?

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A. At first I was General Manager of Sales and during that same period made Vice-President of Sales.

Q. With the same basic responsibilities?

A. Same basic responsibilities.

Q. Can you tell us the participation in the local—when I say "local" I mean the Louisville area market, uh, that the Homes Division had say a year or two years before you got into the Golden Meadows situation?

A. Yes, uh, the two large subdivisions which were being built of U.S. Steel homes were the Whipps Mill Subdivision which was jointly being built by a man named Bill Eagles and Paul Kendall who was President of Kendall Realty Company.

Also, there was a large subdivision in Buechel, Buechel Terrace, operated by a gentleman named Mr. Clifford Knopf and both of these subdivisions, I'd say, built in the hundreds of houses.

Q. Where was the Whipps Mill Subdivision located?

A. Oh Whipps Mill Road.

Q. Give us a little bit better than that; maybe the jury doesn't know where that is.

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A. Louisville has changed so much in the last few years, I'm trying to—it's in the East End.

Q. All right; and I assume that the other, Mr. Knopf's—

A. (Interrupting) Was in Buechel itself.

Q. Buechel, that area?

A. Buechel Terrace was the first really large subdivision being built in Buechel.

Q. Were these successful developments?

A. Very much so.

Q. Now, about the time Mr. Fortner came along which would be 1960, really if you look at the contract date and during those years, what other people did we have using our products in the Louisville area?

A. Uh, Town and Country, which was a joint operation with Mr. Cliff Knopf—part of the Kendall Company—they were building in what is now known as Foxboro Manor and was known at that time as Foxboro Manor.

The O.K. Realty Company was building some houses in the general—it's not Buechel—trying to think of the name. It's in the general Buechel

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area, but it was not Buechel.

Q. All right; well, just generally how many units did Foxboro ultimately use, round numbers?

A. I believe around sixty.

Q. And was that a successful development?

A. Yes, it was very successful; this particular development was building in the classification from—they started

at $18,000 to $23,000 or $24,000 and then was building in the price range of $23,000 to $28,000 to $30,000.

Q. Did you have during that time a dealer known as Duke Carter over in New Albany?

A. Yes, Duke Carter has been a dealer of ours to the best of my recollection since 1959.

Q. Is he still your dealer?

A. Yes, he is.

Q. He operates close by Louisville, as I gather?

A. That's right; he is a local contractor in New Albany and builds in New Albany generally, that area.

Q. Now, without going too far beyond 1962 when Golden Meadows terminated, tell us some of your projects or transactions in the Louisville area.

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A. Too far beyond?

Q. Well, say between 1962 and 1965; somewhere in there.

A. Uh, the Foxboro Manor was a continuing operation. I believe that O.K.—I'm not sure, but I think O.K. was still building in 1964.

I don't really know of any other large operations during that time. There might have been some scattered building, but I don't know it.

Q. Can you tell us the local situation, that is, in the Louisville area with regard to the competition that the Homes Division had, names of your competing prefabricated suppliers?

A. Uh, I'd say that we had a good number of them; there are two local firms—there were two local firms operating in Louisville, Empire Homes and Tru-Built; one is still operating—Tru-Built is still operating and Richmond Homes was building here and National Homes was building here and there was competition and there still is some three or four—Chase-Barlowe was one who did prefabrication.

Those are some of the ones I can remember offhand.

Q. And this is at the time, 1959, 1960 and

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1961?

A. Yes, sir; those firms were definitely in here at that time. Now, I'm not sure about the Chase-Barlowe, but National Homes, Richmond Homes, Empire, Tru-Built; they were all operating at that time.

Q. Directing your attention to this particular transaction, Mr. Black, did you prepare, in part, on or about December 22nd of 1959, prepare in connection with Mr. Day a memorandum regarding the initial approach by Mr. Fortner?

A. Yes sir.

Q. Can you tell us by reference to that, and I am making reference now to Page 2, Mr. Anderson, what the original proposal was that Mr. Fortner put forward with regard to his participation in Golden Meadows Subdivision?

A. The original recommendation which was made by me to the Credit Corporation indicated that Mr. Fortner's equity would be $55,000.

Q. Now, how did you arrive at that figure; was that actually money or was he going to put up some land?

A. He was going to put up some developed lots and some undeveloped land.

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Q. Where was the rest of the money going to come from?

A. The rest of the money they were requesting be borrowed from the Credit Corporation.

Q. And for what purpose was that to be borrowed?

A. To purchase the lots and to develop the lots and construct—construction money was to be included in that also.

Q. Yeah; the subsquent to that time in the early part

of 1960 was there a change in the proposal, your Document 66, by Mr. Fortner, and can you look also at Plaintiff's Document No. 51, which is a little difficult, Mr. Black, but—

A. Yes sir; there were—these were memorandums that I received copies of which were written by Mr. William Rollins of the Credit Corporation.

Q. What does that indicate as to the change from the original proposal of the equity by the Fortner people of $55,000?

A. Best I can read this, it would indicate that he did not want to put in the $55,000.

Q. Well, it is hard to read. We have some-

(Vol. XIII, p. 44)

thing better and we can get to it later on.

A. The indication is there was a difference because he says that, "The only way I would proceed—" was in the following manner in which he eliminates the equity.

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(Vol. XIII, p. 60)

Q. Mr. Black, you recall my discussion with Mr. Miles of the Empire Homes letter to Mr. Fortner under date of October 18, 1960, copy of which you have here and which already has been introduced in evidence?

Mr. Anderson: That is sixty-two, Mr. Reutlinger.

The Witness: Sixty-two.

Q. You are right, right. Now, first, and particular directing your attention to this paragraph on the second page numbered (4) regarding the kind of material to be furnished, tell the jury what type or make, I guess—no, that's a very poor word; what kind of lumber is used with that particular item?

A. In this case, I think we used the word

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"species", I guess.

Q. Species; all right.

A. In the roof structure, they call out here for one thousand five hundred P.S.I. top coat and one thousand two hundred P.S.I. bottom coat of yellow pine.

Q. What did the Homes Division—

By the Court: (Interrupting) So that the jury will understand this, this is a letter, as I remember, that Empire wrote to Mr. Fortner?

Mr. Reutlinger: That's correct, sir; yes sir.

By the Court: After—

Mr. Reutlinger: (Interrupting) After the suit was brought.

By the Court: After the suit was brought, showing what they would agree to construct—

Mr. Reutlinger: (Interrupting) Yes sir.

By the Court: (Continuing) Prefabricated homes for or furnish the package of—

Mr. Reutlinger: (Interrupting) That's right.

By the Court: (Continuing)

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Prefabricated homes in his subdivision; you remember that.

Mr. Anderson: If the Court please, that was a letter. The one which Mr. Miles relied on in his direct testimony was an earlier letter dated May of 1962.

Q. With reference to the letter you have in your hand, Mr. Black, and I think you have already told us a moment ago that the Empire people proposed to furnish yellow pine?

A. Yes sir.

Q. In this roof structure?

A. (Witness nodded head affirmatively.)

Q. What material did the Homes Division furnish for the same roof structure?

A. Well, we used either Western fir or Hemlock and

what is called—it's twenty-five per cent construction or better, and this is a more expensive material. We have used yellow pine and had unsatisfactory completion of our prefabrication with it although when we did use yellow pine, we used instead of fifteen hundred and twelve hundred, we used seventeen hundred and twenty-five, which were the two highest grades of kiln-dried yellow pine available. We didn't.

(Vol. XIII, p. 63)

feel it was satisfactory.

Q. All right. With reference to that letter did the Homes Division furnish any other items not—apparently not proposed to be furnished by the Empire Homes, and I have particular reference I believe to Item No. 8?

A. Yes, 8-L in this letter says that they will supply ceiling, drywall type, the ceiling and walls and in addition to this, in our basic package we ship one hundred pounds of base spackling compound and one hundred fifty pounds of finish spackling compound.

Q. What is the price or value of those two types of compounds?

A. It's about ten or eleven cents a pound or it would be somewhere around $30.00 for the three hundred pounds.

Q. Well, are you talking about now?

A. I was talking about then. It's never—that is an item which has changed very, very little, to my knowledge. It might be twelve or thirteen cents now, but when I was dealing directly with it, it was around ten or eleven cents a pound.

Q. Looking over that letter generally, do

(Vol. XIII, p. 64)

you find any other items which could have a possible cost differential between what is proposed by Empire and what the Homes Division furnished on the basis of quality?

A. The first item, (A) additional materials to be furnished, they called for wood closet shelves and self-supports and we used steel closet shelves and shelf supports which there is definitely an additional cost for the steel and then wood closet poles and we also used steel closet poles and in many of the other items here there is no way to decide. It says, uh, fix chrome bar fixtures and I don't know whether ours were better or worse.

They simply name two 35 pound roof shingles. Well, roof shingles can be bought for $6.00 a square or $9.00 a square, so I don't know.

Q. Are there others, other similar items in that letter?

A. Yes, there are and it's difficult to define.

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Q. Mr. Black, first of all, you have told us that you were Vice-President of Sales up until sometime in 1963?

A. I believe that is correct.

Q. And then you went in charge of production?

A. That is correct.

Q. So that your function at the time these events occurred was sales?

A. That is correct.

Q. And somebody else was in charge of production?

A. That is correct.

Q. And you have become familiar since you got into production with the production matters?

A. More familiar, yes.

Q. All right; this was a period of time and by "this" I mean in 1959, well, 1958, '59, '60 and '61, was a period of time of change in personnel and change of types of material that were being used in the prefabricated houses, wasn't it?

A. That is correct.

Q. The Homes Division was experimenting with, uh, new ways to get steel into the houses during this period of time; isn't that correct?

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A. Correct.

Q. The Homes Division had a big bunch of salesmen and they reduced the salesmen and they switched personnel around and did a lot of things during this period of time, didn't they?

A. That is correct.

Q. There were, uh, as early or late or however you want to call it, in relation to the period of time we are talking about, uh, let me go back a minute first.

United States Steel Corporation got into this prefabricated business originally by buying Gunderson Homes, didn't it?

A. Gunderson Homes, yes, correct.

Q. And Gunderson Homes was a all-wood prefabricated house?

A. Correct.

Q. And U. S. Steel—let's see, tell us a little bit about that all-wood house; did it have wood on the outside as well as on the inside on the walls?

A. Yes, it was a stretched-skin airplane type construction type of house.

Q. And they glued wood, glued and nailed wood

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on the outside four walls and they glued paneling or some sort of wood for inside too?

A. That's correct; yes sir.

Q. And you had the all-wood house actually up until about 1956 or 1957; isn't that correct, sir?

A. Uh, I'd say '55—uh, '55, '56 is when they started the inroads of steel.

Q. Uh-huh. Let me call your attention to Plaintiff's Exhibit 8 and maybe that will refresh your recollection; part of the sales, plan, uh, Mr. Mack identified down here the steel-air home that indicates that the steel-air home was still in production in 1956, or the wood home was still in production in 1956 at this plant in New Albany?

A. Yes sir.

Q. Yes, and you also got into that when you started trying to convert to houses that would use some steel?

A. Well, our first conversion was in our plant in Harrisburg, Pennsylvania, not in the New Albany plant.

Q. I see. Well, as far as the—uh, there was, in 1957 and 1958 then, there was another type of home and then in 1959 you got into more or less the

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package that Mr. Fortner started getting, didn't you?

A. Yes.

Q. And, uh, so that was, uh—had just been on the market for about maybe a year when Mr. Fortner started getting houses, hadn't it?

A. About that time, yes.

Q. And then there were other changes that were made during the course of the year 1961 after Fortner Enterprises started receiving the houses, weren't there?

A. That is correct.

Q. And as far as Fortner Enterprises was concerned, you started sending them houses with the metal studding in the interior walls at about September of 1961; is that correct?

A. I can't recall the date, but I believe it was around that time. We send out a memorandum at that time which indicated when the people would start receiving shipments. In advance of receiving the actual shipments we had advised them, but I don't remember what the actual date was.

Q. And so, when you started sending out the metal-studded interior walls you stopped making them with wooden studs in the interior walls; is that right?

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A. Uh, to a great degree, yes. We had some that we had to finish and there was some apartment buildings, apartment house buildings that we had complete, but for the most part we made a transition to steel.

Q. Okay; so that your dealers then, once they started getting these interior walls with the steel studs in them, uh, that's what they got from then on, wasn't it?

A. That is correct.

Q. Now, Mr. Black, during a period of time here, I believe, uh, well, during this period of time when you were General Manager of Sales and then Vice-President in Charge of Sales, the Credit Corporation communicated their policies to you in your capacity with the Homes Division, didn't they?

A. Yes sir; they—we knew the general outline of their policies.

Q. And when you were with the Credit Corporation before that you were active in communicating the Credit Corporation's policies to the Homes Division?

A. That is correct.

Q. So that you'all, uh, at the Homes Division knew that they had a special financing program available

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to help, didn't you, in this?

A. Oh, sure.

Q. And this special financing program was a sales tool that the Homes Division used to make sales, wasn't it?

A. It was to be—it was to assist us in sales, yes.

Q. And you called it a tool; that was part of your tools to get business, wasn't it?

A. Good mechanics, good tools.

Q. All right; and whenever you wanted a particular piece of business then you would recommend to the Credit Corporation that they go out and try to negotiate a loan that would satisfy your prospect so he would buy your houses, isn't that correct?

A. Yes, if we felt that it was useful commercially to the Division we would recommend that the Credit Corporation get in touch with the parties and see if they could come to some type of agreement.

Q. Right; and that was exactly what happened in the case of Fortner Enterprises, wasn't it?

A. Yes sir.

Q. And actually, Mr. Black, the second transaction which occurred, which resulted in June, 1961, that

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loan agreement was initiated and started out in the latter part of May in 1961, didn't it?

A. I don't remember the date; that could be the date.

Q. That has already been introduced into evidence and was Mr. Day's memorandum.

By the Court: Maybe Mr. Reutlinger will stipulate that.

Mr. Reutlinger: Oh yes; there is no—bound to have started earlier.

Mr. Anderson: May 29th.

Mr. Reutlinger: If that's what is in there, why certainly.

Mr. Anderson: All right.

Q. And this was actually before, uh, this May 29th date was actually before any purchasers of houses had taken occupancy out in Golden Meadows, wasn't it?

A. I imagine the records will reveal that; I was not sure.

Q. Now, you referred a while ago to this Swindler memorandum in April of 1962?

A. (Witness nodded head affirmatively.)

Q. Isn't it a fact, Mr. Black, that by that

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time Fortner Enterprises was getting so desperate that they were looking at any avenue that they could find to try to salvage the situation out in Golden Meadows?

A. Well, I can't substantiate their desperation, but I can tell you they asked if we could deliver a lower-cost package.

Q. Now, you had been hearing these complaints about these basic components in these houses started way back in 1961, didn't they?

A. I think I mentioned this morning that, uh, maybe I didn't, but ordinarily, the beginning of a—or the minor complaints did not come across my desk.

They went to our Products Service Division. If they became instrumental in poor dealer relationships then they were brought to my attention.

Q. Mr. Black, you knew about all of the sink top problems out at Fortner Enterprises, didn't you?

A. Yes sir.

Q. And the fact that as many as three or four sink tops had to be replaced in some houses out there?

A. Yes sir.

Q. And you knew about all of the problems

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as well as other people had with closet doors you were putting in these packages?

A. I know that Fortner Enterprises had some difficulty with the closet doors.

Q. And you heard and were told about the complaints about the interior wall partitions, weren't you?

A. I, uh, I recollect that there were some—there was some opposition or let's say some feeling by the spackler

regarding the taping and spackling of the vertical openings rather than horizontal, yes.

Q. And actually, Mr. Black, once those interior partitions are up, if these walls bowed the only way you could fix that is to take the wall down and put it back up again or put another wall up, isn't it?

A. This is true, but we think if the wall is erected correctly in the first place this doesn't exist.

Q. Now, you were also aware of the gable problems that persisted on many of the houses?

A. I was aware of it, yes.

Q. And so, when you had this—and of course all of these complaints and problems were summarized in this memorandum that Mr. Mack prepared for

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you, weren't they?

A. Outlined generally, yes.

Q. Un-huh; and you were already aware of those, of most of these before he ever wrote that memorandum, weren't you?

A. I would say yes.

Q. And so, it was no surprise at all, uh, when these same problems were described in the June 5, 1962 meeting, was it?

A. No, they were described orally again.

Q. And some of these problems were simply insoluble problems, weren't they?

A. No. I—I don't know what you mean by insoluble, in this particular instance.

Q. You heard the testimony, Mr. Black, about the method on the walls, for example, where they bow in the middle where there is no adequate fastening and we know the only way to solve that is to replace the wall, isn't it?

A. I don't agree with the inadequacy of the fastener, so I don't say that they are insoluble.

Q. All right. To your knowledge, Mr. Black, no written waiver of the terms of the loan agreement was ever sent to Fortner Enterprises, was there?

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A. Written waiver?

Q. Yes sir.

A. Well, I can only say that the contract is the contract.

Q. Well, you don't know of any written waiver that was ever sent to Fortner Enterprises of the terms of the contract, do you?

A. I don't recall any.

Q. All right. Now, Mr. Black, you have told us that you recommend a crew of seven?

A. Of six.

Q. Six, and that's for the erection of the house?

A. That is correct.

Q. So that you have a foreman and five people that do the work?

A. What we call five laborers—trying to classify these as to labor costs, so you classify five laborers and one carpenter and the carpenter would naturally be in charge of the crew.

Q. Mr. Robinson's testimony was that he had a crew of seven, including—what was your recollection of his testimony?

A. My recollection is there were four in-

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volved directly in the erection and three were involved in finish flooring and finish work on the inside of the house; that was my recollection.

Q. Well, isn't it a fact, sir, that what he told you was

that he had five men involved in the erection of the house and two men involved in finishing the house inside?

A. That could have been correct; maybe I misinterpreted what he said. I thought it was two and one; I thought it was two floor finishers and one finish man which would have left four—

Q. (Interrupting) Well, I didn't hear him. Do you distinctly remember any testimony from Mr. Robinson about floor finishers? I don't, Mr. Black.

A. Floor layers, I believe.

Q. Now, so what you're talking about really then is maybe a difference of one man?

A. I'm talking about the difference of erection crews, yes sir. I guess if you want to be definitive that way you could say that, but erection crews ordinarily do nothing else but go from slab, foundation to foundation and do nothing but erect and put the houses under cover and this is what causes the speed of the operation.

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Q. Of course, if there is a component missing that slows them down and then they stand around?

A. Certain components could cause some delay, missing components.

Q. Of course, if sales in this subdivision had gone as they were programmed and as you'all worked them out with Fortner Enterprises to start with, we would have had two hundred nineteen sales through December of 1962, wouldn't we?

A. I guess if they would have sold two hundred nineteen they'd have got two hundred nineteen sales.

Q. Well, the way it was worked out originally was everybody, after looking into it, and including yourself, including your sales people expected to sell out—

A. (Interrupting) That's correct.

Q. (Continuing) In that period of time, didn't they?

A. That's correct.

Q. And if sales had gone under this program then it would have been easy to employ additional crews to put up homes if they would have gone more quickly, wouldn't it?

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A. That is correct.

Q. As far as the Homes Division was concerned this type of package that you were selling Fortner Enterprises, from your regard, was low cost housing?

A. No sir.

Q. Isn't that why you took people over to the subdivision on some occasions to show them the difference between your low cost housing and some of your other higher priced products?

A. Well, maybe we need a better definition of low cost housing. Let's say it was less expensive housing, and I guess you could have used the broad definition of low lost housing, but it wasn't low cost housing of the same vein of the Swindler operation.

Q. Well, that is a term which you have used before, isn't it?

A. Yes, it is.

Q. You have reviewed your deposition; you remember that, don't you?

A. Yes, it's low cost housing; it can be defined that way.

Q. Okay; and it was the policy of United States Steel Corporation as it developed through the

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years here to try to get as much steel into these houses as they could, wasn't it?

A. If it was competitive, yes. It was competitive and

did as good a job or better than the present materials used; that was our aim.

Q. Now, the metal studs here in these panels down here on Plaintiff's Exhibit No. 44?

A. Un-huh.

Q. And Plaintiff's Exhibit 29, that is 28 gauge?

A. Actually, it's about twenty—it's about twenty-nine gauge.

Q. That is a very light gauge metal?

A. That is light gauge.

Q. And that is actually lighter gauge metal than was used in the folding closet doors, wasn't it?

A. Probably, yes; it served a different purpose, so it was lighter.

Q. It was the Homes Division's policy during this period of time not to compensate its builders for the expense which they had to replace a defective part in the package, wasn't it?

A. It was the policy to provide replacement of materials and not labor .

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Mr. Anderson: All right.

Mr. Hamilton: Could we have about five minutes?

By the Court: Can't you do it in less than that?

(At this point Counsels for Plaintiff confer momentarily.)

Q. Mr. Black, local building codes certainly override any F.H.A. specifications, don't they?

A. That is correct.

Mr. Anderson: Well, I think that's all.

Mr. Reutlinger: Nothing further of this witness.

By the Court: You may stand aside. Ladies and gentlemen of the jury, we have had a problem with witnesses scheduled so this concludes our work for today and re-

member the admonitions of the Court and be back in your seats at 9:30 on Monday morning and you are now free to go.

(Whereupon at about the hour of 12:15 P.M., a recess was taken, to reconvene on Monday, June 22, 1970.)

TRANSCIPT OF PROCEEDINGS

VOLUME XIV

Before Honorable James F. Gordon, United States District Judge, for the Western District of Kentucky, at Louisville, Kentucky, on Monday, June 22, 1970.

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(Vol. XIV, p. 3)

By the Court: Good morning, ladies and gentlemen, are we ready to proceed?

Mr. Reutlinger: Yes, Your Honor. Let the record show that by agreement the order of proof has been waived and we call Mr. Harb.

MR. RICHARD K. HARB, called as a witness, by the Defendants, having been first duly sworn, was examined and testified as follows, to-wit:

Direct Examination

By Mr. Reutlinger:

Q. State your name.

A. Richard K. Harb.

Q. Where do you live, Mr. Harb?

A. I live in Louisville on North Peterson Avenue.

Q. And where are you employed?

A. I am employed at the Louisville Area Chamber of Commerce.

(Vol. XIV, p. 4)

Q. And in what capacity?

A. I am Manager of the Research Department there.

Q. And as Manager of the Research Department, briefly, tell the jury some of your functions?

A. Yes, one of the functions is annual estimating of the population of the Louisville area and its major political subdivisions.

Now, this is prescribed by The Kentucky Revised Statute, the 241.065, and is used in the Distribution, determining the distribution of liquor licenses, but we do annually estimate the population according to law.

Q. At my request, uh—let me ask you this before I ask you that; do you also have access to United States Bureau of Census information and data?

A. Yes, I think we are the principal agency that does collect these data and arrange them for publication in this area as well as local data.

Q. At my request, did you undertake to ascertain the population of Jefferson County, Kentucky, including the city of Louisville for the years 1940, 1950, 1960, and 1961, 1962, 1963, 1964 and 1965?

A. I did.

(Vol. XIV, p. 5)

Q. Would you read into the record your figures as the result of your examination and analysis of the material available to you for those years?

A. Yes, the population of Jefferson County—

Q. (Interrupting) Now, does this include Louisville?

A. Yes.

Q. Go ahead.

A. And all its other incorporated cities,

1940, 385,392
1950, 484,615
1960, 610,947
1961, 626,760
1962, 632,350
1963, 643,200
1964, 649,445
1965, 662,200.

Q. All right; does your office also have access to the building permit requests or any other material which would

enable you to estimate or tell the number of single-family dwelling construction in Louisville and Jefferson County, Kentucky, for any given year?

A. Yes, these data are available from the

(Vol. XIV, p. 6)

Building Department of both the City and County.

Q. Are they correlated by your office?

A. Yes, and we publish them also.

Q. At my request, did you undertake to ascertain the number of single-family buildings issued in Louisville and Jefferson County, Kentucky, for the years 1958, 1959, 1960, '61, '62, '63, '64 and '65?

A. I did.

Q. Would you read into the record the number of building permits issued in Louisville and Jefferson County, Kentucky, for those years?

A. Single family dwellings in Louisville and Jefferson County:

1958 4,549
1959 4,320
1960 3,144
1961 3,201
1962 4,026
1963 4,344
1964 4,697
1965 4,715

Q. Mr. Harb, you recall you gave your affidavit in connection with this case in 1966?

A. Yes.

(Vol. XIV, p. 7)

Q. And I have recently again talked to you about your testimony and ask you to verify the figures given in that earlier affidavit?

A. Yes, I did.

Q. With regard to the year 1960 and the building permits about which you have just testified, was there an error in that affidavit?

A. That—there has been a revision. I did not investigate the reason the figures were revised.

Q. I see.

A. But, listed in the affidavit was 3,177 at the time, and I checked recently and it was 3,144.

Q. I see; all right. Now, in connection with the overall picture regarding real estate sales in the County, is your office also furnished a record of real estate sales made through the Multiple Listings Service by the Louisville Real Estate Board?

A. Yes, this is a figure that we collect annually and I do have the records.

Q. At my request, did you undertake to ascertain those figures for the years 1958, 1959, 1960, '61, '62, '63, '64, '65 and '66?

A. I did.

Q. Would you read into the record those

(Vol. XIV, p. 8)

figures of the Multiple Listings sales as reported by the Louisville Real Estate Board?

A. Again, I verified these as of last week. The sales through the Multiple Listings system are:

1958	2,610
1959	2,693
1960	2,602
1961	2,630
1962	2,922
1963	3,222
1964	3,404
1965	3,700

Mr. Reutlinger: All right. You may cross-examine.

Cross-examination

By Mr. Anderson:

Q. Just a couple of questions, Mr. Harb; on your figures concerning building permits you do show an increase between 1960 and 1961, I believe?

A. Yes.

Q. And then, uh, that increase it is of about 67 between those two years, isn't it?

A. Well, 66, 67, yes, that's right.

Q. Yes, and then for the year—you have

(Vol. XIV, p. 9)

got for the year 1962, you have a rather dramatic increase of 765?

A. Yes.

Q. For 1962, don't you there?

A. (Witness nodded head affirmatively.)

Q. Now then, turning to the Multiple Listings again, you show an increase of about twenty-eight for the year 1961; is that correct, over 1960?

A. Yes, that's right.

Q. And then a rather dramatic increase again of almost 300 between the year 1961 and 1962?

A. Yes.

Mr. Anderson: That's all.

Mr. Reutlinger: May the witness be excused?

By the Court: Yes. You may stand aside.

Mr. Reutlinger: Your Honor, since Mr. Lang is no longer a corporate officer may the record also show that the order of proof is waived because we want Mr. Rollins to testify at a later time.

By the Court: So ordered.

Mr. Reutlinger: We will have Mr. Lang.

Testimony of Mr. W. H. Lang

(Vol. XIV, p. 10)

MR. W. H. LANG, called as a witness, by the Defendants, having been first duly sworn, was examined and testified as follows, to-wit:

Direct Examination

By Mr. Reutlinger:

Q. Give us your name.

A. W. H. Lang.

Q. Where do you live, Mr. Lang?

A. In Millburn, New Jersey.

Q. What is your present occupation?

A. I am working for U. S. Steel Corporation as Assistant to the Chairman of the Finance Committee.

Q. Briefly, give us your educational background and your prior business experience leading up to the time of your present occupation.

A. Uh, I graduated from Dartmouth College in 1933 with a Liberal Arts Degree and went to night school at the University of Pittsburgh for five years and procured a Master's Degree.

Upon graduating from college I worked in a service station for Gulf Oil in their training program and left there in 1934 and joined the then Carnegie Steel Company in the Credit Department.

(Vol. XIV, p. 11)

Q. When did you join the Steel Company?

A. In 1934.

Q. And what did you first do for it?

A. My first job there was in the Credit Department as a Credit Analyst, interpreting figures for those—for others to make decisions.

Q. And what has your progress been with the Steel Company?

Testimony of Mr. W. H. Lang

A. Well, over the years, Carnegie Steel merged with other divisions or subsidiaries of the Steel Corporation, U. S. Steel Corporation and as those mergers came along, uh, I moved along in the Credit Department until finally in 1952 I moved to New York City as a place to work and became the Assistant Treasurer of the United States Steel Corporation.

Q. What were your functions and duties as Assistant Treasurer of the Steel Corporation?

A. As Assistant Treasurer it had to do with the investment of the short term funds, the management of the banking relationship, bank balances, the procedures and methods of receiving money and paying money and also involved in the long term investment of the Corporation.

Q. Were you promoted from that position to

(Vol. XIV, p. 12)

Assistant Treasurer?

A. In 1959 I became the Vice-President and Treasurer of the Steel Corporation.

Q. At that time did you also hold a position in the Credit Corporation which we have identified here as a subsidiary of the Steel Corporation?

A. At the time the Credit Corporation was organized in 1954 I became the President of the Credit—President and Director of the Credit Corporation.

Q. Well, in 1959, 1960, 1961, what were your positions with both the Steel Corporation and the Credit Corporation?

A. During this period I was Vice-President and Treasurer of United States Steel and President of the U. S. Steel Homes Credit Corporation.

Q. Now, we are speaking of this period between 1959 and 1961-'62?

A. That is the period.

Testimony of Mr. W. H. Lang

Q. Can you tell us who Mr. Richard Dyas was?

A. Richard Dyas was employed by the Steel Corporation in late 1953 or early 1954 at the time it was contemplated that a Credit Corporation might be organized.

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He was employed because he had been with the Government and the finance—housing finance agencies and we needed that kind of experience if we were going to form a Credit Corporation.

Q. What was Mr. Dyas' position in the organization in 1959, 1960,—'62?

A. Mr. Dyas was the operating head. His title was Vice-President and General Manager. He subsequently became Treasurer, and I guess I neglected to say that I was President and Treasurer during the early days and then Mr. Dyas became Treasurer at a subsequent date but he was—his principal role was Vice-President and General Manager.

Q. Did he report to you during that period?

A. Yes, he did.

Q. You were then his superior?

A. That's right.

A. Dick—Mr. Dyas retired from the Corporation, I think January, February, of this year. He is now Executive Vice-President of the Government's National Mortgage Association, commonly known as the Jenny-May in Washington.

Q. Where does he live?

A. In Arlington, Virginia.

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Q. Directing your attention to the Credit Corporation, and specifically the events leading up to its creation, which I believe was in 1954?

A. (Witness nodded head affirmatively.)

Testimony of Mr. W. H. Lang

Q. Tell us briefly the reasons behind the creation of the Credit Corporation?

A. Uh, the Steel Corporation through another division at that time known as Gunnison Homes had been in the housing division and they had acquired that interest, uh, during the late war years I guess, 1945, maybe a little earlier in anticipation of what might occur in housing after the war.

The demand built up and so forth and Gunnison was an early, uh, well, located here in Louisville in New Albany, and was an early manufacturer of homes and after being in that business for a number of years it was observed that the principal competitors in housing, namely National Homes, because it was the largest, and Harnesfager, and a little company down in Georgia, Kingsbury Homes—it was observed that these companies had financing affiliates.

In other words, they had organized companies to help their dealers, their builders of their homes.

So, after observing this for some time, the

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Steel Corporation upon the recommendation of the Homes Division decided that it too, should have a financing company, somebody to help its dealers.

That was the kind of competition which it faced at that point, so in 1954 the Credit Corporation was organized for the sole purpose of—well, I guess it was a dual purpose.

If we helped the dealers of the Homes Division we then helped sell more homes and if we didn't do that then we were not able to attract some dealers that we thought that we needed to expand our business—we weren't able to attract them because other manufactured home builders already had a means of helping.

So, for that reason, to meet competition, we organized a Credit Corporation.

Q. Mr. Lang, you mentioned a moment ago aiding the dealer and then aiding U.S. Steel Homes to make sales. Is there any practical way to separate those two functions, purposes?

A. No, there isn't any way. If we, uh, if the Homes Division is out soliciting business and they meet a dealer or try to obtain a dealer who says he likes the product but he wants financing, he needs financing help, and if that financing is not available

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someplace else, that is locally, his choice is either to buy our product or not.

So, they are really—you can't distinguish between the two. When we help the Homes Division we help the dealer and he helps the Homes Company and vice-versa.

Q. What was the reason for creating a separate corporation as opposed the possibility of letting the Homes Division handle this financing directly?

A. Uh, the principal reason was that the Homes business was a part of the Steel Corporation's overall business.

If we were to set up, as we did, a separate corporation, then we were able to borrow money outside.

We weren't solely dependent upon the Steel Corporation. While many people think the Steel Corporation had unlimited resources, this is not the fact.

There were unlimited places for it to go. By creating a separate subsidiary we then became like others in the industry and the analogy might be like General Motors Acceptance Corporation or Ford Acceptance, those companies, which over the years have financed large volumes of products for the producing company, but the

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money they used to finance that for you, for me, if we bought a car from financing, came from the money market

and therefore, the Steel Corporation set up this to put a modest amount of capital in and then based on the standards set by banks and other lending institutions, it could borrow money, from banks and other institutions to help the dealers help the homes.

Q. Will you tell the jury, Mr. Lang, the general background of the Credit Corporation's operation; how it obtained its funds, wherein it directed its efforts?

A. Well, the initial capital of the Credit Corporation was one million dollars and after the—at the time we organized to become involved in this separate operation, separate and yet the same to help the Homes Division, at the time we became involved, then we looked around and we found out that most banks would lend an institution such as ours somewhere between six and nine times its capital.

In other words, if we had a million dollars worth of capital we could borrow from any number of banks, six to nine million dollars, the difference depended upon our experience in the business, how we conducted the business and we were making money; we

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were competitive with those who had been in this business a great many years.

Q. Was it the purpose or intention of the Credit Corporation to compete directly with banks or other lending institutions, and did you have a limited fund set?

Mr. Anderson: Objection.

By the Court: Overruled.

A. Your question again, sir?

Q. Was it the intention and purpose of the Credit Corporation to enter into competition with banks or other lending institutions generally or did you have some limitation on purpose or concept?

A. Well, by design, or—we limited ourselves. Again,

if you went back, if you were to follow, like I mentioned, National Homes because it was the publicly held company and they published their figures so that this, like Kingsbury Homes didn't publish theirs and Harnesfager didn't publish theirs, but they were part of the total. Ours were not published, but National Homes' figures were published.

If you looked at their statements, if you looked at what they were doing in the home building process, that is, land acquisition, land development,

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which means the streets, lighting, sewers, water, gas, up to the building, why, there is the actual construction money that is required to pay the carpenters, the plumbers and then finally, there is what they call the permanent money or the mortgage-takeout meaning when the house is finished and has a buyer, the savings banks or insurance companies would buy that mortgage and that was their investment.

By design, when we first started out, we thought we would fill the void that we saw which was the construction financing. If that were not available locally from a local commercial bank, uh, commercial banks normally do that type of financing—if that were not available, why, we would be available to lend money on a construction program.

We minimized or tried to avoid the land acquisition and land development loans and in this way we stayed out of the mortgage investment as National Homes was in that business.

Well, National Homes was organized—National Homes Acceptance Corporation was organized, I think, in 1947. So, when we looked at this field we said, "Well, what, uh, what is the competition and what do we do about it and what part of the business are we going into?

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So, we tried to minimize our efforts to avoid competing

with local banks, insurance companies, whatever; we will help our dealers; we will fill that—we will do the financing job.

Q. Can you tell us briefly, the specific history of the Credit Corporation's operations between 1954 and late 1958, giving some emphasis to the lending policies and the results that you observed from the following years?

A. Uh, ideally, we tried make loans which—which—but we endeavor to make loans to a dealer for what you might call the building season.

In other words, a man would have some land, might have it developed and then—he would have an objective for that year of twenty homes or a hundred homes, and it varied according to the dealer, so we—we tried to make loans for one building season.

Now, obviously if you didn't run into this dealer until August or September, it wasn't going to be completed during that so-called building season which runs from March through October or November, as long as the weather will permit.

So, some of these loans ran a little bit longer, but our effort was to try to measure up to the program

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that he had outlined for himself, see that he had enough financing, remove the financial worries from him so he could get in, build—build the houses, get his profit and then talk about next year.

The Credit Corporation in that process, annually earned money from that part of its activities, from the lending of money and the receipt flowing back from the sale of the houses from the dealer.

Q. What was the lending policy of the Credit Corporation during that period, 1954 to 1958?

A. I am not sure I know what you mean by "lending policy?"

Q. Well, classified as a conservative policy, an exceptionally liberal policy or—

A. (Interrupting) Oh, well, it was rather—it was an interesting thing to observe because if I had been business in Pittsburgh or Chicago or Kansas City, there would be one standard of lending arrangement which had grown up and that was part of the practice in that particular area.

When we started doing business in a number of states and we did business in those states where the dealers needed the help, where we had dealers, uh, then we began to find out there were varieties of lending

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arrangements.

For example, National Banks are not permitted to lend above a certain amount on a construction loan. Savings banks are also controlled. Savings and loans at that time were less controlled. Insurance companies could pretty much write their own ticket. Finance companies could pretty much write their own tickets as to how much they lent and under what terms and conditions, but our policy during that period was essentially a very conservative one.

We were interested in basically these things: was the dealer a good builder; had he built numbers of houses before so that he wasn't getting in too heavily?

We were interested in his ability to complete something during, as I say, during a building season so that he could get his money in; he could sell the homes and at the end of the year he had the profit and we were paid off and if it went for two seasons, that was all right, but we were essentially very conservative because we didn't—a dealer was only good for use as long as he was productive and "productive" meant that he borrowed money; he bought the houses; he put in all of the necessary things and he was able to

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liquidate it.

Now, the minute there was a failure in that chain, that's the minute that he wasn't good for himself; he wasn't good for the Homes Company and maybe the Credit Corporation would have a problem, so you like to see it work clear through, complete the whole cycle.

Q. During the period of 1954 to 1958 what happened to the sales volume of the Homes Division?

A. Well, the Homes Division, as any other builder, was subject to the, uh, market demands for houses which, uh, like in 1954, 1955 as I recall we had posted an all-time peak on housing starts, so the market was very good.

By 1958 a depression of some sort had set in or a recession, whatever it is called and the housing demand was less so that the housing demand during the period you mentioned had been as high as it had ever been and it had fallen off appreciably.

Q. Did the Credit Corporation in December of 1958 adopt the resolution empowering it to enter into what is known as special financing?

A. Yes.

Q. What was the purpose or purposes for

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making that change?

A. Well, as a means of stopping—as a means of getting where the—for the available market, at that time, Homes Division had suggested that there were certain things we might do—might consider doing and suggested this to the Steel Corporation and it was finally approved and the basis of that was that if we are able to do certain things which our conservative policy of the past had not permitted we might be able to get more business.

Now, those things meant, in contrast to a very conserva-

tive policy of lending—I won't say "very," but a conservative policy and, natural policy of lending, we then went into land acquisition and development which we had not avoided one hundred per cent, but we tried to stay away from it.

So, the change that was authorized was the expansion of our lending, the type of lending that we might do; the type of lending and also the extent of the lending and instead of being conservative and sticking with sixty, sixty-five per cent, we allowed ourselves under certain conditions, based on a recommendation of the Homes Division to go into a higher lending figure.

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Q. Did this change in 1958 of your policy in any way change the basic purposes of the Credit Corporation?

A. The basic purpose was and still is to lend money to dealers to help sell houses. It has never changed; it can't change. That's the only reason for its being in existence. It doesn't lend money publicly; it lends it to dealers.

Q. Directing your attention now, Mr. Lang, to the background operations of the Credit Corporation whereby it acquires money to lend to effectuate these purposes, tell us first where it gets its money that it later lends to dealers such as the Fortner Enterprises?

A. Well, as I indicated, the initial capital was a million dollars and as I further indicated, we believed ourselves, if we conducted a right kind of business in the eyes—not our eyes, but in the eyes of the people that lent money, namely, the banks, then they would lend us six to nine million dollars based on that million.

So, we borrowed money regularly from different banking institutions on that basis and we paid whatever the going prime rate was.

Q. No, tell the jury what you mean when you

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say "prime rate"?

A. Well, the prime rate is that rate which the best-qualified and most financially sound businesses in America can borrow. It's—a prime rate loan applies to that loan which can be put on without any worries or any concern about repayment.

It's a simplified I.O.U., merely signed a note and say that you promise to pay and the only requirement in terms of qualifying for that is either, as in our case, we had the Steel Corporation as a parent Company, so we were a wholly-owned subsidiary and therefore, the banks, the lenders had to know that the Steel Corporation would also stand behind the Credit Corporation; would not permit it—they would not be permitted to lend money because the Steel Corporation would stick with it all the way so there was no question about repayment.

Q. Did you get any money at less than prime rate?

A. No, we couldn't; the prime rate is the best and that's all we could qualify for.

Q. What rate or how much does money cost banks and other lending institutions?

A. That is a very difficult question. The

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banks themselves aren't always sure because banks normally obtain your deposits and my deposits as a demand deposit and for that they perform some service.

Corporations also make demand deposits in the bank and that money, particularly back at that time, that money was essentially free.

Now, with the theory went that they could, if ever they lent that, they could lend it at any price—it's true that they had to have the money, keep the books, but that money probably didn't cost them very much. I was a

banker part of this—in between time and one of the problems that we always tried to resolve was how much do the various kind of deposits cost us?

For example, a savings bank, until recently, the maximum that bank would—could pay was four and a half per cent on a savings bank. There were many banks for instance, in New Jersey, that were only paying three per cent and therefore, this money was appreciably cheaper than any money that credit corporations would get, yet when they relent this money in the mortgage markets for construction financing, they relent it at the going rate, which was, whatever it was, six per cent or seven per cent or with a fee

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or without.

Q. Are there other institutions which lend money which can obtain their funds without paying the premium rate?

A. Well, uh, savings and loans generate all their money which they put in the mortgages from attracting savings and loan deposits.

Insurance companies who are big lenders in the real estate business, obtain their funds from all of us when we pay insurance premiums for which they perform a service. So, I would say generally their cost of money, which is what you are talking about, I believe.

Q. Yes sir.

A. Their cost would be less than the prime rate.

Q. In order to handle credit, money or any commodity, for that matter, I believe it is necessary to have overhead, rent, young ladies to handle the paper and hit typewriters and so forth?

A. Right.

Q. Is there any competitive advantage to the Credit Corporation with that respect between banks and other lending institutions?

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A. Well, thinking of this objectively, I would say that we were probably at a disadvantage.

If you think of this as, uh, as sort of an equation and on this side you had the money cost and that was the money that we borrowed from the bank in the main and that had a certain dollar cost to us and on the other side we had, in addition to that, we had other expenses, other expenses being the rent that anybody paid from an independent landlord, telephone, lights, heat, we had to complete for our clerical help and the personnel we hired to go out and make trips to inspect properties, to negotiate loans and these were all competitive prices.

The amounts—the other side of the equation was the amount we could charge for our loans which were essentially competitive, and I have to say also that on the charging side, our charge to dealers, we were not trying to charge the most because our incentive, again, was dual. We wanted to help sell houses and by giving this man the money at—not a cheap rate because we made money on it, but at not at an unreasonable rate, we made him—it was easier for him to make a profit or he could make a little more profit and therefore he was a better dealer; he was in business.

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Q. If, in fact, you had an economic advantage in the money lending and credit what do you believe the Credit Corporation would do?

A. Well, I can't imagine anybody thinking in terms of an economic advantage because we were competitive in all our elements. The only place we weren't, and this was, uh, putting it this way, as our—as our operation grew and as the banks said, "Well now, you are trying to borrow too then decided another million dollars to the Credit Corpora-

then decided another million dollars to the Credit Corporation and they subordinated that; they said, "This is secondary to any money you borrow on the outside."

Now, that money, we paid more than the prime rate from the Corporation, so we were really getting our cheapest money—that was only a million dollars—we were getting our cheaper money from the banks and we borrowed from the parent company and we would pay one per cent each point above the prime.

Q. Directing your attention to the Steel Corporation itself, the parent Corporation, at what rate could it borrow money in 1959 to 1962?

A. Only the prime rate then and now.

Q. Did the Steel Corporation have any

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overhead in conducting its operation, physical or otherwise?

A. That's a—yes, we did.

Q. Well, you had the same common problems?

A. We had the same common problems and the prime rate is the best that we could—that any of us could borrow. I—I believe that—let's get back to National Homes for a minute.

National Homes had a major relationship with a major bank in Chicago and because of their performance in production and in financing they were able to borrow, I believe, or at least I was told at that time the prime rate.

Mr. Hamilton: Object.

Mr. Anderson: Objection.

By the Court: Yes, sustained. You can't tell what you were told.

The Witness: Okay.

Q. Turning now, Mr. Lang, to the Fortner transaction itself, did you ever actually come to Louisville during the

time this was in progress in order to participate in any of the matters related to it?

A. No sir.

Q. I mean, you may have come—

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A. (Interrupting) I was in Louisville, but not for this purpose.

Q. Well, that's—I am limiting, of course, to this purpose.

A. Right, right.

Q. Do you have any knowledge of the Fortner transaction other than from Company records?

A. No. Mr. Dyas was the General Manager. Mr. Rollins was the man in charge at the New Albany office, so I would read the reports or we would discuss it.

Q. Did you in any way participate in the Homes Division's decision to make or ask the Fortner Enterprises to become a dealer?

A. No. It was even a little bit the other way in terms that I was concerned, as we were concerned with every dealership, that a man would do that which he had either experienced before or it was a reasonable expansion in this activity and by that I mean if a man had built fifty houses in a season before and he was going to build five hundred houses, that would seem to be an extreme.

If a man had been able to build and sell fifty houses and he said, "Well, I'd like to build—

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I'd like to aim for a hundred this year," and then we—and that seemed reasonable and the building market, the price range is, the competition, all of the things that affected his total accomplishment, why, that, yes, then we would go from what—we would agree to that kind of an expansion and in this case one of the questions we asked, "Well, Mr.

Fortner has built our product before. Can he put up this many houses during this period?", and we were told by the Homes Division, that, yes, in their opinion, he could. So, therefore, we moved ahead with the loan.

Q. Did you require Mr. Fortner to generally buy United States Steel Homes packages or was that requirement limited to the land purchased with the money borrowed from the Credit Corporation and then only while the loan was outstanding?

Mr. Anderson: Objection; leading question; the document speaks for itself, Your Honor.

By the Court: Well, I'm going to let him get the question in shape and answer it. Take another whack at it.

Mr. Reutlinger: All right.

Q. In this particular case we know that Mr.

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Fortner, or Fortner Enterprises borrowed funds from United States Steel Homes Credit Corporation to purchase land?

A. Yes.

Q. What requirement was placed or what restriction was placed on Mr. Fortner's Corporation in connection with that loan?

A. Well, the Credit Corporation being interested in the sale of homes simply said that, "The money we lend is designed for the purpose of creating property on which U. S. Steel homes would be produced—would be erected and sold."

So, it was, uh, we were just—that's the way it is; our money is only for that purpose, so if you borrow from us then this is where the money is to be spent, to buy U. S. Steel homes, to do the other necessary things to erect them and sell them.

Q. All right; after the commitment was made to Mr.

Fortner, or rather his Corporation, what was the policy or attitude of the Credit Corporation toward the project generally?

A. Well, the reports that we had—maybe the best illustration of that is this; that there were two loans, one made in 1960 and one made in 1961.

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When the second loan application came in that was initiated early in 1961, I believe, and I would have to check the records on that.

At that time we raised a question, "Well, how was Mr. Fortner doing?", because we were then in our second year and this was to be in addition to the first loan, to be an addition to the first loan so that the management of the Homes Division told us that Mr. Fortner was doing all right and they thought that he was making a profit and that he had built some fifty or sixty houses and things were going along reasonably well and that therefore they strongly urged that we make the second loan, which we did, I believe in June, I think June of 1961.

Q. Directing your attention now to May of 1962, did the Credit Corporation authorize any foreclosure action to be instituted against Fortner Enterprises during that period.

A. Uh, I recall none at that time. I think—I—I believe that the loan was up-to-date at that point and that therefore we had no reason—in fact, we had no ability to foreclose.

I have to say that, as anybody knows when they are in business, if you take security for something there

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comes a certain time when you have to think in terms of, uh, are you ever going to use it.

We were not thinking in terms of using that security

because as long as Mr. Fortner was going ahead he was using our products which is why we lent him the money and uh, the more he used the happier we were as long as he was making money at it and was able to repay us.

At no time, if he wanted to pay our loan off, with reference to your question before, if he wanted to retire our loan he could put up anybody's house he wanted. There was no compulsion on that.

As long as he used our money we wanted our houses built.

Mr. Anderson: May we approach the Bench, Your Honor?

By the Court: Overruled; I will overrule what you are going to say and you may have your exception.

Q. I will show you, Mr. Lang, Defendants' Exhibit 11 and ask if this isn't a report from Ernst and Ernst directed to Mr. Rollins of the Credit Corporation under date of June 19, 1962?

A. That's right.

Q. For what purpose was that audit requested

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by the Corporation?

A. Well, there was a period when we found out that Mr. Fortner was apparently having some difficulty and, uh, in order to determine the nature of our position and his position, and because we had lacked any—I don't know how to describe this, let's say full financial facts, we thought the best way to satisfy his problem and ours was to get an independent audit.

So, that's why Ernst and Ernst were called in so that they could look at the books and they could tell Mr. Fortner and they could tell us exactly what the circumstances were and that's what this report is.

Q. I believe the report goes to the end of May, 1962; May 31st?

A. That's right; July 31st through May 31st, 1962.

Q. And what does that report reflect with relation to Fortner Enterprises' condition as to solvency or insolvency, and I must caution you if you do not already see it, the record shows that Fortner Enterprises had other operations beside Golden Meadows.

A. It has been so long since I looked at

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this record that I—

Q. (Interrupting) That's all right; we will have Mr. Gardner go over them.

A. I would hesitate to—

Q. Well, assume then for purposes of this question that Defendants' No. 11 shows that Golden Meadows Subdivision project, a part of the operation of Fortner Enterprises, was solvent and that it was making a profit as of the end of that audit report.

Bearing that in mind, prior to July 19, 1962, when this suit was brought against the Steel Corporation and the Credit Corporation did you ever authorize a foreclosure suit to be instituted against Fortner Enterprises?

A. No, a foreclosure, no, we did not, to answer your question.

Q. Well—

A. (Interrupting) The—a foreclosure suit means that the relationship which was supposedly good for the three parties, the dealer, the Homes and Credit Corporation, that that's the end of it the minute you foreclose against a dealer. I feel very strongly on this point because it happened—that's why you should make a loan sound before you get involved because

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as soon as a man comes to that point then he is no longer a potential buyer of the Homes product so this is something to avoid. We did not instigate any foreclosure suit before that date.

Mr. Reutlinger: All right. You may ask.

By the Court: Gentlemen, let's take about ten minutes.

(Whereupon at about the hour of 10:26 A.M. a short recess was had, reconvening at about the hour of 10:30 A.M. and the following proceedings occurred:)

Cross-examination

By Mr. Anderson:

Q. Now, Mr. Lang, if I understand your testimony correctly, in 1958 the Credit Corporation at the instigation or request of the Homes Division of the United States Steel Corporation did, uh, go into this special financing program?

A. That is right.

Q. And the purpose of that special financing program was to help the Homes Division obtain a greater

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share of the market in prefabricated houses?

A. Well, increase sales and to meet competitive factors, yes. It expanded the sales—sales of the Homes Division and to meet the competitive factors of the marketplace.

Q. And the Credit Corporation passed a resolution concerning this, didn't they?

A. Yes.

Q. And would you read that resolution, sir?

A. The entire item?

Q. Well, you can start at "Resolved".

A. This is dated December 16, 1958:

(Reading) "Resolved that for the purposes of enabling the United States Steel Homes Division of the United States Steel Corporation, (1) to attain a minimum distribution of one thousand eight hunderd units in 1959 and such additional distribution as may be feasible, and (2) to enlist and maintain the support of and assistance of selected dealers in the develop-

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ment and testing of steel components and when specifically requested by the Homes Division, (A) this Corporation in instances in which its present program of loans and mortgage commitment issuance and mortgage commitment procurement prove inadequate to effectuate the above purposes, extend the following financial assistance to dealers in addition to the present program, (1)".

Q. I think that is sufficient.

A. All right.

Q. In other words, that document says that in order to effectuate the purpose of obtaining a minimum sale of one thousand eight hundred homes for the following year the special financing program is to be put into effect?

A. That's right.

Q. All right; and at the same time, Mr. Lang that this resolution was passed by the Credit Corporation the Finance Committee of United States Steel Corporation

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approved the same program; isn't that true?

A. Yes.

Q. All right. I think we have to use this one (Indicating). Then I call your attention to the fact that the Finance Committee of United States Steel Corporation in August, 1959, approved the continuation of this program to support one thousand six hundred sales for 1960 in an

effort to assist the United States Steel Homes Division in reaching a two thousand five hundred unit sales objective in 1960 or to support more sales of such objective as exceeded and the program was continued into 1960, wasn't it?

A. That's right.

Q. And to obtain an even greater number of sales?

A. That's—yes, that was a normal—

Q. (Interrupting) Okay.

A. (Continuing) Normal development of—hopefully a normal development of the market.

Q. And this special financing program, specifically, sir was not, as you've already told us, a conservative type program, but you regarded it more as a commercial situation?

A. The words that were used here were it was

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to be a program that was not conservative, but could be considered as prudent. In other words, it was a combination of the commercial aspect which you have mentioned along with the ability of a builder to build something, along with the market demand in a particular place at a particular time; it was a combination of all those.

Q. And that resolution also required the Homes Division to underwrite or guarantee the loans that were made by the Credit Corporation under the special financing program?

A. Not all of the loans.

Q. Well, it, uh, required certainly—

By the Court: (Interrupting) Well, it guaranteed the Fortner loan; I think that has been established hasn't it?

Mr. Anderson: Yes sir.

Mr. Reutlinger: What did the Court say?

By the Court: It is agreed that it guaranteed the Fortner loan.

Mr. Reutlinger: No sir; it guaranteed only the land portion of the Fortner loan which we are going to prove by Mr. Rollins.

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By the Court: Oh; all right.

Mr. Reutlinger: Which we are going to prove by Mr. Rollins; the construction notes were not—

The Witness: (Interrupting) Guaranteed.

Mr. Reutlinger: (Continuing) The land acquisition and development was.

Q. This same resolution, sir, to which we have referred in Paragraph (B), does that pertain—does not that require the Homes Division guarantee the loans or is that related to something else?

A. It is related to another aspect of the home financing.

Q. All right.

A. You want me to read that?

Q. No, I just wanted to know whether it relates to the special financing program or not.

A. This Paragraph pertains particularly to mortgages and at what price they are committed. It has nothing to do with the land acquisition or land development or land development or construction.

Q. All right. Thank you; now, we do know that Plaintiff's Exhibit 237, the underwriting agreement

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was entered into in March of 1962; isn't that correct?

Mr. Reutlinger: What was that number exhibit?

Q. Two hundred thirty-seven; it is the underwriting agreement.

A. I would have to—it looks like—well, I would have

to look at it to see exactly what is in it; again, I haven't observed this for some time. Yes, this is the document as you described it.

Q. All right; and I'll ask you to turn to the schedule attached and the Fortner Enterprises loans do appear on that underwriting agreement?

A. That's right.

Q. And there are quite a few other loans that appear on that underwriting agreement, aren't there?

A. Yes.

Q. Uh-huh; and all of those loans were of the high-risk type character under the special financing program which requires a guarantee, weren't they?

A. Uh, I really can't answer your question.

Q. Well, Mr. Lang, read the top of it up there.

A. Yeah, I see what that says. What I am inclined to—it's just like you said a few minutes

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ago, that all of the Fortner loans were guaranteed. They were not all guaranteed. The only guarantee from the Homes Division was that pertaining to the land acquisition and development.

So, when you put these kind of figures on here for some of these I suspect that they refer to—that part of them were guaranteed and part of them may not have been guaranteed.

This is entitled, "Loans Guaranteed by United States Steel Homes Division."

Now, whether that identifies the total amount or more than what is guaranteed by the Homes, I can't tell you until I would examine each one.

Q. I am not concerned with the amounts, Mr. Lang. All I am concerned with is the fact that all of those loans are listed there were guaranteed?

A. That's right.

Q. By the Homes Division under the special financing program?

A. To one degree or another; that's correct.

Q. All right; so that what you're telling us, if I understand it is that as in the Fortner situation there may have been other loans as a part of the same package that are not the subject of the guarantee to

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a particular company; is that our understanding?

A. Yes, that is essentially true.

Q. All right. Now, the Credit Corporation, Mr. Lang, has answered an interrogatory which we served on you and I don't remember at this time whether you or Mr. Rollins or Mr. Dyas signed the ninth interrogatory, but that required you to tell us separately for each of the years 1960 through 1962 the names and addresses of every person or company to whom loans were made which in the aggregate exceeded $250,000.

I want to read now the names of those loans that exceeded $250,000 and ask you to look that attachment there and tell me whether they appear on the guarantee; Allerdt Homes Incorporated?

A. Yes; that's not in excess of $250.

Q. Not on there?

A. Yes.

Q. Not on that document, right?

A. It's—I thought you said that—

Q. (Interrupting) I am reading a different list, Mr. Lang.

A. Okay.

Q. I am reading an answer to an interrogatory in which the United States Steel Homes Credit Corporation

Testimony of Mr. W. H. Lang

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has told us, and it is already in evidence that—about the two hundred fifty—loans exceeding $250,000 made during this period of time.

So, all I want you to do now is, as I read these, tell me whether or not those companies appear on that list there and we have established that Allerdt Homes Incorporated does appear on there.

Now, what about Andover Development Corporation. I don't think you will find it on there.

A. On first look I didn't find it.

Q. All right; Broyhill Land Corporation?

A. Broyhill Lane, Yes.

Q. M. T. Broyhill and Sons Corporation?

A. Yes.

Q. Clifford C. Loss Incorporated?

A. Yes.

Q. I don't think you will find Cowan Builders on there?

A. What was that name, please?

Q. Cowan?

A. No sir.

Q. And I don't think you will find Delaware Home Builders on there?

A. No sir.

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Q. Dorsey Development Corporation?

A. Dorsey; yes sir.

Q. Now, what I am going to do with the rest of them is not ask you to find ones that aren't there because I have already gone over this, sir. You will find Fifth Cincinnati Builders Incorporated on there?

A. Yes.

Q. You will find Fourteenth Ohio Builders on there.

A. Fourteenth Ohio, yes.

Q. Fourth Hoosier Villas?

A. Fourth Hoosier, yes.

Q. Harrison Homes?

A. Yes.

Q. Heritage Building Corporation?

A. Yes.

Q. Highland Terrace?

A. Yes.

Q. Hillsdale Development Corporation?

A. Yes.

Q. Hoosier Villas Incorporated?

A. Yes.

Q. Lakewood Manor?

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A. Yes.

Q. Midland Development Company?

A. Yes.

Q. Ninth Meadowdale Incorporated?

A. Yes.

Q. North Cincinnati Builders?

A. Fourth?

Q. North Cincinnati Builders?

A. Yes.

Q. North Hills Incorporated?

A. North Hills, yes.

Q. Regency Homes Incorporated?

A. Yes.

Q. Stoll Myers Builders Incorporated?

A. Yes.

Q. Third Hoosier Villas?

A. Yes.

Q. Thunderbird Homes Incorporated?

A. Yes.

Q. W. Anthony Torsell Incorporated?

A. Yes.

Q. Twelfth Ohio Builders?

A. Twelfth Ohio, yes.

Q. United Construction Company?

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A. United, oh, yes.

Q. And Valleydale Builders?

A. Yes.

Q. Valley High Incorporated?

A. Yes.

Q. And Willow Dell Builders?

A. Yes.

Q. All right sir. Now, I have read to you and we have established that the ones that you have found there, there are twenty-three of them, sir—I mean, I'm sorry, twenty-nine of the forty-three that are listed in the answer to the interrogatories appear on the underwriting agreement, correct?

A. Is that twenty-nine out of what?

Q. Out of forty-three loans exceeding $250,000, uh, at least the portion of those loans appear on the underwriting agreement that you have identified there.

A. Well, many of the loans that you have read here, sir, were less than two hunderd fifty. I don't quite understand what the two hundred fifty meant yet.

Q. Well, we asked for all of the companies to whom loans exceeding $250,000 had been made. As I

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understood your testimony these guarantees were limited from time to time to just land acquisition and development portions of loans and therefore that may very well explain why the figures appearing on the underwriting agreement are on occasion, less than $250,000?

A. Yes.

Q. My only point here being that, uh, of the loans which involved in excess of $250,000 of commitments, twenty-nine of the forty-three of these loans appear on the underwriting agreement.

I know you didn't count them, but if you take my figure of twenty-nine of forty-three, otherwise, the statement is correct, isn't it?

A. Well, you read from that list and those names you read are on this list.

Q. All right; that's what we wanted to bring out, and the underwriting agreement specifically covered the high-risk type loans for which the Credit Corporation wanted to be protected by the Homes Division?

A. Yes sir.

Q. Now, let's go back to the money for a minute. This is the 1961 financial statement, and then there is one for 1962 back here, sir.

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A. These are the copies of the audits?

Q. Yes sir. Well, copies of the Price-Waterhouse financial statements for U. S. Steel Homes Credit Corporation, Mr. Lang.

First of all, you told the jury that the initial capitalization of the Credit Corporation was one million dollars. The authorized capitalization was ten million dollars; isn't that true?

A. I believe that is a part of the record, yes.

Q. And so there was available for sale by the Credit Corporation to the United States Steel Corporation an additional nine million dollars of stock?

A. Yes sir.

Q. And in addition to that, I call your attention to the bottom note on that financial statement where United States Steel Corporation had committed itself to make sub-

stantial funds available to the Credit Corporation; you see that?

A. Yes sir.

Q. And how many millions of dollars was that?

A. That says, "And lend the Credit Corporation an additional twenty-nine million, such loans to be

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subordinated to bank loans."

Q. Right. Now, if I understood your testimony correctly, what you told us that the Credit Corporation obtained a great deal of its money from banks and the prime rate by using the credit standing of the United States Steel Corporation?

A. No, I didn't say it that way precisely, sir. I said that the Credit Corporation had one million dollars of capital to start with and that in the business in which it was, which was the lending or credit business, the people who lent money to corporations such as the Credit Corporation normally lend from six to nine million against one million worth of capital and so, this statement here shows one million dollars of capital as was indicated and it shows, as I indicated later, the corporation lent another million dollars to the Credit Corporation instead of buying capital. They lent another million dollars and that capital of a million and the loan of a million from the Steel Corporation formed a borrowing base for bank borrowings which are on this statement in one year, twelve million dollars and another year, thirteen million dollars so that would be six and a half times the capital investment, plus the subordinated loan.

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Q. Mr. Lang, the question, sir, was in obtaining the prime rate from the banks and in obtaining the monies from the banks you were using the credit standing in the

community of the United States Steel Corporation. Now, you have already told us that on direct examination, haven't you?

A. I said as the subsidiary of the United States Steel Corporation we enjoyed the highest credit corporation because the Steel Corporation owned us, yes.

Q. Right; that's all I wanted to bring out again sir.

A. All right.

Q. I show you Plaintiff's Exhibit No. 31, which is the annual statement for United States Steel Corporation for 1961. Would you please tell the jury the amount of profits that United States Steel Corporation made in 1960 and 1961, or its income or whatever you want to call it?

A. Well, the line indicated here as income reinvested in business, in the year 1961 it was a hundred and sixteen million, nine hundred thousand dollars.

Q. Well, Mr. Lang, give me, please what I

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asked for. I asked you for the total income net income for the United States Steel Corporation for 1960?

A. The net income before dividends?

Q. Yes.

A. All right; in the year 1960 it was three hundred four million, a hundred and seventy thousand, nine hundred ninety dollars and in the year 1961, only a hundred and ninety million, a hundred eighty-two thousand, two hundred seven dollars.

Q. Only a hundred and ninety million, sir?

A. Well, appreciably less compared to the year before.

Q. Right; you should be so lucky.

Mr. Reutlinger: Note an objection, if Your Honor please. I think the jury should be admonished as to Counsel's gratuitous remark.

By the Court: I'll sustain the objection; we will have no side-bar remarks.

Mr. Anderson: Indulge me for a moment, Your Honor; I have a number of documents I want to refer to.

By the Court: While you are looking for those we will give the jury ten minutes.

(Whereupon at about the

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hour of 11:08 A.M. a short recess was had, reconvening at about the hour of 11:20 A.M., and the following proceedings were heard:)

Q. (By Mr. Anderson Continued:) Mr. Lang, I believe this same United States Steel Corporation annual report that covers or shows figures for the years 1960 and 1961 shows under current assets for 1960, two hundred seventy-six million, five hundred one thousand, one hundred ninety-five dollars?

A. Yes, that is what it says.

Q. Right; and it says two hundred eighty-one million, three hundred ninety-six thousand and eighty-five dollars for 1961 and would you please tell us what the excess of assets or liabilities and reserves, or in other words, the net was of the United States Steel Corporation in 1960 and 1961?

A. This shows that the ownership of the Steel Corporation, the stockholders, had an investment of three billion, three hundred five million, eight hundred eighty-one thousand in the end of the year 1961; that represented what the stockholders had.

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Q. All right; thank you. Now, sir, the Credit Corporation never gave any sore of a written waiver to the Fortner Enterprises of any of the terms of the loan agreement, did it?

A. Uh, I don't understand. We mutually agreed on a loan agreement.

Q. Right, and the question—

A. (Interrupting) We were never requested for a waiver except at the very end of the—when Mr. Fortner apparently was having problems of some sort, he asked us for the right to build other products on the land we had financed.

Q. And you refused?

A. Is that what you call a waiver?

Q. No sir. I—we will take off from the statement you just made; and the Credit Corporation refused that request, didn't they?

A. We didn't refuse. We said that our loan had been designed to aid the sale of the Homes Division products and if he wanted to use his land for some other purpose if he were to retire our loan he could do what ever he wanted with the land.

Q. Now, to get back to the question I asked you, you did—the Credit Corporation never gave nor

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offered to give Mr. Fortner a waiver of any of the provisions of the loan agreement, did it?

A. Well, I suppose there is no reason to offer a waiver because it would have to come from the other side. There would have to be a reason for a waiver. Now, I am not aware of his asking for a waiver except the one I mentioned.

Q. All right. Now, would you please now, sir, answer specifically that one question; the Credit Corporation never gave Fortner Enterprises a written waiver of any provision of the loan agreement, now, did it?

A. Not that I know of.

Q. All right; and this is the loan agreement of October 28, 1960, which is Defendants' Exhibit No. 7. I

would like for you, please sir, to read Paragraph 2 right where your thumb is.

A. (Reading) "This agreement, together with the notes and mortgage hereinabove described, constitute the entire agreement between the Borrower and Lender and no representations or ogreements, express or implied have been made to or

(Vol. XIV, p. 60)

with the Borrower not herein contained. This agreement shall not be amended or modified nor may any of its terms or conditions be waived, except by an instrument in writing executed in the name of and on behalf of the Lender by one its officers thereunto duly authorized."

Q. All right sir. Mr. Lang, it was your intention as the President of the Credit Corporation during this period of time and the intention of the Credit Corporation so long as the agreement was in effect to require Fortner Enterprises to erect on each lot in the Golden Meadows Subdivision a home plan manufactured by the Homes Division of the United States Steel Corporation?

A. That is correct.

Q. We are through with the loan agreement, sir. Now, I call your attention to Plaintiff's Exhibit No. 152 which is a memorandum written to you by Mr. Lang on June 8, 1962.

A. By Mr. Dyas you mean?

Q. By Mr. Dyas to you, sir.

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A. (Witness nodded head affirmatively.)

Q. And I call your attention to the language down here (Indicating).

A. Un-huh.

Q. "To facilitate these negotiations I assured Mr. Reut-

linger that the Credit Corporation would withhold action to enforce payment of the loans for a maximum period of two weeks provided satisfactory progress in negotiations with the Homes Division. Interest is now one month delinquent and since maturity of one of these notes on June 1, all are technically in default. The Homes Division expects to receive the list of claims—"and so forth, and then,

(Reading) "In the course of discussions at this meeting the dealer made several observations that he was broke, that he was going into bankruptcy, et cetera. We therefore advised him it was necessary for us to invoke our rights under the loan agreement to audit the books pertaining to this project and immediately after the

(Vol. XIV, p. 62)

meeting engaged the firm of Ernst and Ernst to conduct such an audit and they agreed to commence the following morning. Looking forward somewhat it does not appear reasonable to expect the liquidation of our loan through the use of products by this dealer. Regardless of the outcome of current negotiations, the dealer may refinance, but it is also likely we will wind up with another project to liquidate. It is not too early for consideration to be given to the management of such an undertaking."

Now, did you receive that memorandum with that language in it?

A. Yes.

Q. And Mr. Dyas, in that memorandum, is talking about the meeting that occurred in Mr. Hamilton's office on June 5, 1962, isn't he?

A. I haven't read the whole memorandum. I

(Vol. XIV, p. 63)

don't know. If that is what that memorandum says, that's it.

Q. That's what it refers to.

A. Yes.

Q. And Mr. Dyas has given two weeks, or otherwise the loans are going to be liquidated. Now, that is clearly what that says, isn't it?

A. Well, that might be his recommendation at that particular time. I am not sure when I even got that because I was traveling quite a bit and it may have been a week or more before I ever read that record.

Q. All right.

A. Are my initials on there to indicate when I read it or anything?

Q. I don't have the slightest idea, sir.

A. Well, I don't either.

Q. Now then, I show you Plaintiff's Exhibit No. 3.

A. Yes sir.

Q. That is a demand letter, isn't it, to Fortner Enterprises for payment of all of the loans?

A. Yes sir; it's a demand for settlement, uh, after reciting exactly what amounts are owing, the

(Vol. XIV, p. 64)

interest which has accrued and it's a request—request for payment to avoid further problems.

Q. Un-huh; and that request, that's type of request for payment always precedes or comes before a foreclosure suit, doesn't it, sir?

A. Well, if the payment is made there is no foreclosure.

Q. Right; if payment isn't made, then it could lead—

A. (Interrupting) Not necessarily.

Q. (Continuing) To, uh, foreclosure follows, doesn't it, sir?

A. Sir?

Q. Foreclosure follows, doesn't it?

A. No, it doesn't; no, heavens no. This kind of statement is made many times and not followed by foreclosure.

It depends upon a man's reaction to it. If the man (A) pays it out, there is no foreclosure or (B) if he comes in and says, "Well, I have these kinds of problems and I expect to walk by them or cure them," or whatever his circumstances are, or, "I can put up additional collateral", there is no foreclosure. Foreclosure is not automatic on this by any means.

(Vol. XIV, p. 65)

Q. Okay.

A. This is merely an identification of a standing on July 12, 1962.

Q. Mr. Lang, I call your attention to Plaintiff's Exhibit No. 52 which is a blow-up of one of the documents that is in evidence in this case which we obtained from the files of the United States Steel Corporation and that document says:

> "As you probably know, most of the major manufacturers make development loans in some form or another, but most of them charge a fee of ten per cent or more. In addition to this simple interest we only charge a half point fee and this of course puts us in a very competitive position."

Now, that was the state of affairs in 1959, 1960, 1961, wasn't it?

A. Well, how are you relating the ten per cent to a half a point?

Q. Well, to me, the clear language is, uh, ten per cent of the loan is the charge for making it

(Vol. XIV, p. 66)

and in one instance, uh, and a half a per cent is a charge for making it in another.

A. Well, sometimes if ten per cent would be, and I don't know what this referred to particularly because I am not just familiar with it at this point. A ten per cent sometimes might be interpolated as one point versus a half point. I don't know what it means here; that's why I asked you.

Q. Well, it's not my document, sir. I don't know.

A. The difference between ten and a half, that's one thing. If it's a difference of between one and a half, that's not that much.

Q. The Credit Corporation, I think you have told us in response to one of Mr. Reutlinger's questions, tried to make the terms of its loan attractive to the borrowers to help the Homes Division sell houses?

A. Attractive, and we also had the obligation of trying to make some money in the Credit Corporation, which we did.

Q. You did make some money?

A. That's right. There are all kinds of interest rates. The only point of my comment was that we neither charged the higher nor the lowest. We—but

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we are in business to make a profit and help sell homes, and we charged that which was reasonable in particular circumstances.

Now, a half a point fee was probably used by, uh, maybe thirty or forty per cent of the people in business. Another thirty or forty per cent might use one per cent and the others might use four or five per cent. It ranged all over, so we were neither the highest or the lowest.

Q. And you don't know what the ratio of monies were particularly for land acquisition and development that your competitors were making?

A. The only way we knew is this, is through some

of our dealers. We had two or three dealers, prominent dealers who were doing business with, uh, National Homes and Harnesfager, and if we didn't name a competitive figure, if we were too high, for example, they very quickly told us, "Well, your rates are out of line."

Now, it's a question of whether they were trying to argue for their benefit and get it down or telling us the truth.

Over the years, we have learned—we worked with enough of these people that you could trust them

(Vol. XIV, p. 68)

and so therefore, when they said, "Well, you are out of line", we had to either us, we had a choice of meeting that competitor's rates or not taking the business.

So, we were in there to help the Homes and we—a half a point seemed reasonable to us based on a competitive and the competition that we were faced with.

Q. Now, it was clearly, I believe, the policy of the Credit Corporation to have built on each lot, developed with the funds borrowed from the Credit Corporation, and each and every lot is developed, uh, a package purchased from the United States Steel Corporation's Homes Division?

A. Well, I believe our basic agreement is in evidence here, the organization of the Credit Corporation and that's why it was in business, yes.

Q. That was the policy?

A. Yes.

Mr. Anderson: Right; I think that's all, Your Honor.

Mr. Reutlinger: I have no further questions of this witness.

By the Court: You may stand aside.

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Testimony of Mr. W. H. Lang

(Vol. XIV, p. 71)

Q. All right; directing your attention to Lot 205 about which testimony was given, I think by Mr. Cooper before he left the stand, I will ask you if—well, put it this way; did the Credit Corporation release its mortgage on Lot 205?

A. We granted a release for the payment of $2,200 which was the real estate value applicable to the land note.

Q. This was for the land note only?

(Vol. XIV, p. 72)

A. Land note only; we had advanced no money for construction.

Q. Did you, subsequent to that time on Lot 205 furnish any financing for the construction of the house ultimately built on Lot 205?

A. No.

Q. Do you know who did?

A. Our files indicate I believe that the Louisville Mortgage Service financed the construction on it.

Q. Is this Mr. Ed Horn's organization?

A. That's right.

Q. Getting generally back into the situation, tell us the original proposal presented to the Credit Corporation by Mr. Fortner with the regard to the requested financing and the equity he proposed to inject into the transaction?

A. Well, the original proposal which I have to assume came from Mr. Fortner to the Homes Division was on the basis—

Mr. Anderson: (Interrupting) If the Court please, if he wasn't present I don't think he could testify about it. He says he assumes.

By the Court: Well, was it

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a written proposal or an oral proposal?

Testimony of Mr. W. H. Lang

Mr. Reutlinger: Well, I will let him look at Plaintiff's Exhibit 66, I believe.

By the Court: All right.

The Witness: A written proposal from the Homes Division to the Credit Corporation which outlined some ninety-some lots with the equity injection to be on the part of Mr. Fortner, or others, to the extent of I believe $55,000.

Q. You may refresh your recollection with Plaintiff's Exhibit 54.

A. In fact, we had covered ninety-nine lots and we were requested to provide a loan of $125,950 against the total land and development requirements of $207,900 indicating an equity injection by the proposed borrower to the extent of $55,950.

Q. Subsequent to that time was there a change in the proposal put forward by Mr. Fortner and you may refresh your recollection from the Plaintiff's Exhibit No. 51 which you are going to have some trouble reading. I don't think there is anything ahead of that, but you may look.

A. No, this was at the meeting that I had with Mr. Fortner on January 6th, attended by Mr. Dyas

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and a representative of the Homes Division.

At that time, Mr. Fortner indicated that his only desire was to change this—this program so that he could at that time purchase one hundred fifty-five lots in Iroquois Development at the rate of $1,100 per lot or a total of $170,500.

He was to inject thirty-one developed lots as equity, having a value, a stated value of $62,000.

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MR. ROLLINS, called as a witness, by the Defendants, having been first duly sworn, was examined and testified as follows, to wit:

Direct Examination

By Mr. Reutlinger:

(Vol. XIV, p. 82)

Q. The first contract, the record shows, was entered into in October of 1960, I believe; is that correct?

A. That's right.

Q. And then the second contract involving the thirty-two additional lots was entered into in June of 1961?

A. August, I believe.

Q. I think maybe you're right; August of 1961?

A. Un-huh.

Q. Except for the differences in amounts, and of course the difference in identity of the land involved were the basic provisions the same in the second contract as the first?

(Vol. XIV, p. 83)

A. Yes.

Q. Did both contracts have what is sometimes known as an accelerated lot pay-off provision?

A. Yes, both contracts provided, I think, for a $2,200 lot payment pay-off, which is an accelerated pay-off of the land note.

Q. Tell the jury why the Credit Corporation asked for that provision to be inserted in the contract?

A. Well, basically, it was inserted to get an early return of what we considered more or less risk capital and our investment in the land.

Of course, in addition, it was helpful to Mr. Fortner in that it saved interest on his land notes and I would say that, uh, from a tax standpoint he had benefits from it by reason of the fact that he would defer any part of his profits until the tail end of the subdivision.

Q. Did you attend the meeting of June 5, 1962 I believe in Mr. Hamilton's office?

A. I did.

Q. Who else attended that meeting?

A. Well, Mr. Hamilton and Mr. Hopson and Mr. Fortner, uh, Mr. Dyas, myself and Mr. Black from the Homes Division, Mr. Boyd from the Homes Division and I

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believe that's about all.

Q. Did you include Mr. Fortner in that?

A I think I included Mr. Fortner.

Q. Well, was he there?

A. He was there.

Q. Oh, I'm sorry. I didn't—what statements or representation was made to Mr. Fortner at that meeting regarding his ability to build conventional homes on the land which was then encumbered by a mortgage to the Credit Corporation?

A. Well, Mr. Fortner, of course, requested that we permit him to utilize our funds to build other than our product.

He was informed that we would not do so; he could pay off the loan in full and build anything that he desired.

Q. Did Mr. Fortner at that time make any statement or representation regarding his ability to liquidate the indebtedness?

A. Well, he reported his inability to liquidate the indebtedness, particularly Fortner Enterprises.

Q. Well, I am speaking of the Corporation; not Mr. Fortner himself.

A. Fortner Enterprises couldn't—he inti-

(Vol. XIV, p. 86)

mated or stated at the meeting that Fortner Enterprises was verging on bankruptcy.

• • • • • • •

(Vol. XIV, p. 87)

Cross-Examination

By Mr. Anderson:

Q. Mr. Rollins, first of all, I want to show you a dealer purchase order concerning this Lot 205 that you first talked about.

A. Right.

Q. Now, that was a purchase order for a U. S. Steel Home package concerning Lot 205?

A. Right.

Q. And it is dated June 5, 1962?

A. Right.

Q. Correct; and a U. S. Steel home was built on that Lot 205, wasn't it?

A. I assume so.

Q. Now, Mr. Rollins, the first loan agreement that you prepared covered the full one hundred eighty-seven lots out there in the subdivision; in other words, the subject matter of that first loan agreement was one hundred eighty-seven lots?

(Vol. XIV, p. 88)

A. That is correct.

Q. Then, the subject matter of the second loan agreement was an additional thirty-two lots?

A. That is correct.

Q. Those loan agreements covered all of those total two hundred nineteen lots, between the two of them?

A. If that's the figure, yeah.

Q. Well, one hundred eighty-seven and thirty-two?

A. I am not real fast—

Q. Now, Mr. Rollins, as a matter of fact, Mr. Fortner at this June 5th meeting that you have just testified about told you and Mr. Dyas of the Credit Corporation that they

could pay you off in full if they were allowed to build conventional homes out there, didn't they?

A. Yes, by utilizing our money and building conventional homes.

Q. But if they had conventional homes they could pay you off?

A. That was his opinion.

Mr. Reutlinger: Let the witness

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finish.

Mr. Anderson: I thought he had.

Mr. Reutlinger: It seemed to me you interrupted.

Mr. Anderson: I didn't mean to.

The Witness: Well, okay; he made that statement.

Q. Well, this is what you were told there at the meeting?

A. Yes sir.

Q. Now, Mr. Rollins, in the procedure that normally is followed, or back in this period of 1959 to 1962, that was followed by the Credit Corporation was that the Homes Division would ask the Credit Corporation to approach a particular dealer and negotiate a loan with him?

A. They would initiate the request; this is correct.

Q. All right; and they would ask you to negotiate a loan to help them make the sales of their houses, the prefabricated house packages?

A. That was the purpose of our being in

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business.

Q. Right; and that is what happened in Mr. Fortner's case or in the case of Fortner Enterprises, correct?

A. Well, we were approached by the Homes Division.

Q. Right; Homes Division asked you to—

A. (Interrupting) I don't know whether the Homes Division was approached by Mr. Fortner.

Q. I know you don't know that, Mr. Rollins, but what I mean is that the Credit Corporation was approached by the Homes Division and asked to get together with Mr. Fortner and Fortner Enterprises and negotiate a loan?

A. That is correct.

Q. And the purpose of this was, as some of the documents you have heard read in evidence indicated, to enable the Homes Division to obtain an additional entry or another into the Louisville and Jefferson County market?

A. That is a matter of record.

Q. As you know, this Plaintiff's Exhibit No. 57 is a provision of the loan agreement and it provides that, in the part we don't have blown up, that the

(Vol. XIV, p. 91)

borrower is required to do certain things and this is one of them, to complete the development of the premises and to erect on each of said lots free from mechanics' liens a prefabricated dwelling house manufactured by U. S. Steel Homes Division?

A. Right.

Q. Now, that was a standard provision in most if not all of the loan agreements of the Credit Corporation, wasn't it?

A. Correct.

Q. Now, Mr. Rollins, the Credit Corporation couldn't involve itself in the level of the prices that the Homes Division charged for the house packages, did it?

A. No.

Q. Homes Division didn't involve itself in the quality of the house package?

A. You mean Credit Corporation?

Q. That's right, Credit Corporation?

A. You said Homes.

Q. I'm sorry; Credit Corporation didn't involve itself in the quality of the house package at all?

A. No, had nothing to do with it.

(Vol. XIV, p. 92)

Q. One other thing, Mr. Rollins; now, at this June 5th meeting just so the record will be clear, Mr. Fortner didn't ask the Credit Corporation to lend any additional money?

A. Not that I recall; not that I recall.

Q. All right; and one other thing occurs to me. You testified about loans totalling two and a half million dollars and of course Fortner Enterprises never got any two and a half million dollars.

A. Oh, I appreciate that. I mean you can take that to also include your aggregate of loans which I think is in the record that we have made for 1960, 1961, and 162 because that was the amount of the commitment; it is possible that nowhere near that amount was disbursed.

Q. That's right; and of course we know that most of the land acquisition and development money was disbursed.

A. Yeah.

Q. But as to the mechanics of the construction money, the construction money was advanced after the sale was made?

A. Right.

Q. So that the only construction money that

(Vol. XIV, p. 93)

could have come to Fortner Enterprises was construction money on houses that they sold during this period of time.

A. Except during that period I think we did, uh, by mutual agreement with Mr. Fortner and at his request, provide him with some financing on a certain number of speculative houses because he was—he was of the opinion

that that would help his sales program to have houses already completed for purchasers—a nominal number?

Q. Right; there were three or four of those?

A. Yes, on a roll-off basis.

Q. He got to the point where he was trying to do anything to keep things going?

A. Well, I wouldn't—I don't know that.

Mr. Anderson: All right; I think that's all.

Mr. Reutlinger: No further questions of this witness.

By the Court: You may stand aside.

Mr. Reutlinger: We will call Mr. Kennedy.

• • • • • • •

MR. KENNEDY, called as a witness, by the Defendants, having been first duly sworn, was examined and testified as follows, to wit:

Cross-examination

By Mr. Anderson:

(Vol. XIV, p. 100)

Q. I see; you're speaking only of your office now?

A. Yes sir.

Q. I see. Mr. Kennedy, would the dollar amount of real estate mortgages recorded in this County in your opinion, reflect the condition of the market for a given period of time?

A. Well, not necessarily. The market, of course, has been on the upgrade ever since 1945; long as I have been in business it just seems like every year it just keeps on going up.

Q. Just keeps going up?

A. Un-huh.

Q. And that is since 1945?

A. Yes sir.

• • • • • • •

(Vol. XIV, p. 105)

MR. CARPENTER, called as a witness, by the Defendants, having been first duly sworn, was examined and testified as follows, to wit:

Cross-examination

By Mr. Anderson:

Q. Mr. Carpenter, taking these figures that you have just gone through here, for 1960 I think you said three thousand one hundred forty-four?

A. That's right sir.

Q. And then in 1961 three thousand two hundred one?

A. Right.

Q. And that is an increase?

A. Yes, about seventy-five.

Q. About sixty-five?

A. Uh, fifty-seven, sir.

Q. All right; fifty-seven.

A. If my mathematics are—uh, fifty-seven.

Q. All right; and then in 1962 we have a rather dramatic increase to four hundred, oh twenty-six?

A. Yes, it did go up by eight hundred in 1962.

Q. And that was, well, a rather dramatic increase, wasn't it?

A. It was substantial, yes.

Q. And shows a definite trend upward in the market?

(Vol. XIV, p. 106)

A. At that time there was a substantial upward trend '62, '63.

Q. Right.

A. And '64.

Q. And if the Louisville Real Estate Board figures on sales showed an increase of from two thousand six hundred thirty in 1961 to two thousand nine hundred

twenty-two in 1962, that is also a further indication of the upward trend of the market between 1961 and 1962?

A. What were the figures?

Q. Two thousand six hundred thirty for 1961 and two thousand nine hundred twenty-two for 1962?

A. Right.

Q. So that again is another indication of the upward trend in the market between 1961 and 1962?

A. There was roughly three hundred increase in the sales of the Real Estate Board the year of 1960-61 to '62, right, sir.

Q. Right; so the sales were up for 1962?

A. They were, sir.

Q. All right. Now, Mr. Carpenter, if the evidence also shows a rather dramatic increase in

(Vol. XIV, p. 107)

recorded mortgages between 1961 and 1962 that would again indicate—be another indication of a rising market in the real estate business, wouldn't it?

A. Uh, I don't know that I would agree with that completely, sir. Mortgages usually reflect transactions, but they can be more for improvements or a multitude of things, sir; I think your transfer is more significant than the mortgage.

* * * * * * * *

(Vol. XIV, p. 108)

Mr. Anderson: If the Court please; may the record show that the order has been waived so that Plaintiff may at this time call a rebuttal witness?

By the Court: All right.

* * * * * * * *

MR. CHARLES WILLIAM HENNEY, called as a witness, by the Plaintiff, having been first duly sworn, was examined and testified as follows, to-wit:

Direct Examination

By Mr. Anderson:

(Vol. XIV, p. 109)

Q. Would you give us your name?

A. Charles William Henney.

Q. By whom are you employed, sir?

A. I am employed by the Real Estate Investment Department of Prudential Insurance Company.

Q. And what is your position there?

A. My title is Associate Manager and my position, the title is Senior Appraiser.

Q. And how long have you been with Prudential?

A. For a little over seven years.

Q. Have you been located in Louisville that entire time?

A. I have been in Louisville for the full time with my employment with Prudential.

Q. All right. Would you explain to us just what, briefly, what your duties are?

A. Basically, uh, my duties with Prudential are to invest their money in real estate, mainly mortgage loans.

Q. Mr. Henney, did you at my request—well, first of all, I guess I had better ask you this; do you in your position with Prudential have access to the record pertaining to loans made during the period 1959 through 1962?

(Vol. XIV, p. 110)

A. Yes, all of the loans that were worked on, loans that were made, loans that were turned down, the files are in our office for the last twenty-five years probably.

Q. All right sir; would you tell us, please what area your particular office serviced in 1959 through 1962?

A. At that time we covered, uh, Jefferson County as a primary area although we did cover other counties, Bullitt County and Hardin and various other areas, that were farm loans, but basically Jefferson County is the main production area.

Q. All right. Now, did you at my request check the records of Prudential Life Insurance Company for the period of 1959 through 1962 to determine if any one hundred per cent acquisition and development loans had been made by your Company during that period of time?

A. Yes, I did check the records for the period of time you stated.

Q. And what did your investigation reveal?

A. During that period we did not make any land loans.

Q. All right; therefore you didn't make any

(Vol. XIV, p. 111)

one hundred per cent—

Mr. Reutlinger: (Interrupting) Note an objection to the leading question.

By the Court: Yes. I'll sustain that.

Q. Well, did you or did you not make any hundred per cent land acquisition and development loans during the period 1959 through 1962?

A. No.

Q. Do you know the policy of Prudential Insurance Company during the period 1959 through 1962 concerning land acquisition and development loans?

A. Yes, I do.

Q. And what is that, sir?

A. During that period, and this held true up until just the last few years, it was the policy of the Company on any type of land loan, commercial loan, apartment loan, that type of loan, to not exceed seventy-five per cent of market value.

By the Court: Now, how would you know that was the policy when you weren't employed there?

The Witness: There is records of the Company which I have checked at his

(Vol. XIV, p. 112)

request.

By the Court: Now, do the records show what the policy was?

The Witness: Yes, we keep—we keep what we refer to as, uh, we are in the Ohio Valley and they refer them as O.V. letters that go back for many years and it was also just the policy of the Company period, not to exceed seventy-five per cent loans.

By the Court: All right.

The Witness: In those types of loans, the only type we could ever go over were residential loans where you make a G.I. loan, but on commercial loans or apartment loans or land development loans we could not exceed seventy-five per cent.

By the Court: Well, you can see how I have some difficulty in grasping how you could testify about the policy of a company in existence at a period that you didn't work for it, don't you?

The Witness: I could see that, but I have checked and all I'm saying is I have checked what our policy is.

By the Court: You are saying what they did do, aren't you? They did not make this type during that period; that's really what you're saying.

(Vol. XIV, p. 113)

The Witness: No, I'm saying that the policy of the Company was not to exceed seventy-five per cent on those type of loans; seventy-five per cent of the market value appraisal.

Testimony of Mr. Charles William Henney

By the Court: All right:

Mr. Anderson: That's all I have.

Cross-Examination

By Mr. Reutlinger:

Q. If my arithmetic is right, you came with the Company locally sometime around 1964?

A. No, about '63.

Q. 1963?

A. Seven and sixty-three would give you about right.

Q. Where did you work before 1963?

A. Uh, before that I was in the Service after I got out of college, for the year before I came to Prudential, I was with the Hundredth Division at Fort Chaffee, Arkansas.

Q. And before that were you with Prudential?

A. No, there was a short period of time between graduation and the time I went in the Army that I was in a management-training program with the Kroger

(Vol. XIV, p. 114)

Company in different phases of management.

Q. So, you really came with Prudential into Louisville in 1963?

A. Well, I joined Prudential in 1963.

Q. Except for a short period with Kroger between your college and military service this was your business experience?

A. That's correct.

Q. I believe you also told us on direct examination that the records indicate that they didn't make any land loans during the period in question?

A. That is correct; there were some worked on that were turned down, but not made.

Q. You just didn't make any?

A. Not that we couldn't make any; we just didn't make any.

Testimony of Mr. Charles William Henney

Q. I don't—oh, I'm not saying you couldn't, but you didn't make any, did you?

A. We did not make any during this period. Now, we worked on some loans—I didn't, but the Company did.

Q. All right; who sets the Company policy?

A. That's a good question. I would just trying to guess at that one. We always wonder ourselves

(Vol. XIV, p. 115)

Theoretically it is supposed to come from our Home Office and filter down. We—Prudential is set up in about seven offices. We are out of Jacksonville, Florida and most of our policy would be through Jacksonville, Florida which handles about a twelve state area.

Q. From time to time does policy vary?

A. Some matters, yes.

Q. And are exceptions made to policy from time to time?

A. No, not in the area you're speaking of.

Q. Never an exception has been made?

A. There they just couldn't; there is no exceptions to that seventy-five per cent.

Q. Absolutely none?

A. No.

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(Vol. XIV, p. 117)

Mr. Reutlinger: And the record should also reflect that, by agreement the parties stipulate that the report of sale signed by Jack E. Mudd, Commissioner of the United District Court under special appointment and filed in the record March 18, 1964, may be considered as evidence in connection with the litigation including arguments to the jury.

Mr. Anderson: No objection to that.

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TRANSCRIPT OF PROCEEDINGS

VOLUME XV

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Before Honorable James F. Gordon, United States District Judge, For the Western District of Kentucky, at Louisville, Kentucky, on Tuesday, June 23, 1970.

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(Vol. XV, p. 47)

Mr. Reutlinger: We would call Mr. Meyers.

MR. WALLACE R. MYERS, called as a witness, by the Defendants, having been first duly sworn, was examined and testified as follows, to wit:

DIRECT EXAMINATION

By Mr. Reutlinger:

Q. Tell us your name.

A. Wallace R. Myers.

Q. Where do you live, Mr. Myers?

A. 3105 Creekside.

Q. Where is that?

A. Louisville, Kentucky.

(Vol. XV, p. 48)

Q. All right; and by whom are you presently employed?

A. U. S. Steel Corporation, U. S. Steel Homes Division?

Q. And how long have you been with the Homes Division?

A. Since September, 1967.

Q. And how long have you been with the Steel Corporation?

A. Since September, 1951.

Testimony of Mr. Wallace R. Myers

Q. Where did you start?

A. At Southworks in Chicago as a laborer in the open-hearth; that's a part of the steel making operation.

Q. Do you have any professional training in accounting and finance?

A. Yes sir.

Q. Tell us what that is.

A. University of Chicago graduate courses in Cost Accounting, Economics, Statistics and so forth.

Q. After you got out of the open-hearth work what positions have you held with the Steel Corporation?

A. I became a Technical Trainee in the Accounting Department in 1952.

(Vol. XV, p. 49)

In 1954 I became a Supervisor of Statistics and since then I probably have covered most of the areas of accounting within the major steel producing areas for the Corporation.

My last assignment prior to coming down here was as the Manager of Long-Range Planning and New Products Development.

Q. What is your present position with the Homes Division?

A. I am the Comptroller.

Q. Briefly, tell the jury what those duties are.

A. Maintaining the records for the Corporation, being sure that the financial statements are accurate, correct and to the point and being sure that they are in conformity with the established Corporation procedures and of course, in accordance with any Government regulations.

Q. Are the financial records of the Homes Division under your direct care, custody and control?

A. Yes sir.

Q. Do you have any first-hand knowledge of the Fortner transactions, as such?

A. No sir.

(Vol. XV, p. 50)

Q. Where were you in 1962?

A. In 1962 I was in Pittsburgh in the Appropriations Area for United States Steel Central Operations.

Q. Does the Homes Division, as a Division of the Steel Corporation, have any separate parts?

A. Yes sir; from a statistical standpoint, or profit standpoint, we do reflect the profitability of our manufacturing operations as compared to any of the other activities that we might be involved in.

Q. So, the homes manufacturing aspect of the Homes Division is kept separately by way of financial records?

A. Yes.

Q. At my request did you—oh, is the Homes Division on a calendar year or a fiscal year accounting basis?

A. Our fiscal year is the same as the calendar year.

Q. Did you, at my request, review the records for the Homes Manufacturing portion of the Homes Division for the years 1959, 1960, '61 and '62?

A. Yes sir.

Mr. Anderson: May it please

(Vol. XV, p. 51)

the Court; this is another time that I think we ought to be heard in chambers.

By the Court: Ladies and gentlemen of the jury; when it gets down to the end, you know, we goose-bite and nitpick a good deal. So, if you will excuse me, why we will go in.

(Whereupon at about the hour of 10:48 A.M. an adjournment was taken to chambers of the court and the following proceedings occurred:)

By the Court: Yes sir.

Mr. Anderson: If the Court please, in the course of rather extensive discovery on the part of the Plaintiff in

this lawsuit we asked the Defendant, United States Steel Corporation for just this information which they are now proposing to put into evidence and they refused to give it to us.

Now, they come up at the trial and decide that it is pertinent. I do not, in the first place, see the relevancy or materiality of whether the Homes Division, which is a division and which is, uh, for corporate purposes only a division, not a separate corporation—I cannot see the relevancy nor materiality

(Vol. XV, p. 52)

in the first place.

In the second place, they have refused to furnish this information to us through a number of depositions. Mr. Reutlinger, when he listed this gentleman as a witness, or a possible witness this time, I took the man's deposition and I was advised by Mr. Reutlinger before the deposition began that he wasn't with Homes Division at the time; that the only thing that he was with the Comptroller of the Company and that he had custody of the Company records.

I don't think that they can take the position on one hand in the course of discovery they are going to refuse to furnish information and then try to put it off during the course of the trial, but again, the principal objection is that of relevancy and materiality.

Mr. Reutlinger: If Your Honor please, that is just exactly what Mr. Myers said, "I have no personal first-hand knowledge of the transaction and I keep the records and the financial records and I am Comptroller," and Mr. Anderson didn't ask him the first thing about those records; didn't ask him the first thing about the profits.

Now, I have gone very carefully through the interrogatories and the only thing that approaches—

(Vol. XV, p. 53)

that remotely approaches this point in the interrogatories that is the written interrogatories to which I have reference is the question that, addressed to the Company generally, and Mr. Black answered on behalf of the Company and it dealt with a package cost or the profit per package and he said, "I can't do it", of course, he said on advice of his people and we still do it on a package basis. It's like a mass-produced automobile with white sidewalls and hydromatic; you can't tell your costs. You can on an annual basis.

Now, when you—

Mr. Anderson: (Interrupting) I was referring to this deposition, Mr. Reutlinger.

Mr. Reutlinger: I am just getting to that, Mr. Anderson, if you will let me finish.

Mr. Anderson: All right.

Mr. Reutlinger: When they took Mr. Black's deposition, the question was asked, I believe at Page 33, the question:

> "Would you have in your personal files information that you could furnish us"

and I objected and instructed the witness not to answer if he has it and if he doesn't have it, tell, and his

(Vol. XV, p. 54)

answer:

> "I could possibly have it",

and I instructed him not to answer and Mr. Anderson certified the question.

Again, at Page 35 or 37—36, it is;

> "to your knowledge, in addition to the overhead of the Homes Division was it—were other expenses allocated to the Homes Division",

and it was objected to by United States Steel and he was instructed not to answer and to let the question be certified.

Then:

> "Taking into consideration your overhead expenses and possible allocation of expenses does Homes Division of United States Steel during this particular period of time about which we have been questioning you, were your homes or some of them, being sold at less than the overall cost, and of course this is the individual homes",

(Vol. XV, p. 55)

and he couldn't tell anyhow, but I objected and instructed the witness not to answer and said to let the question be certified and Mr. Anderson said, "Fine".

By the Court: What do you propose to prove by this witness?

Mr. Reutlinger: The profit or loss figures for the years in question.

By the Court: For the Homes Division?

Mr. Reutlinger: Yes, manufacturing.

By the Court: I don't think it is pertinent, competent or relevant.

Mr. Reutlinger: All right; I would like to get it in then by avowal. Mr. "A" abandoned the certification. We have never been out here on this certification.

Mr. Anderson: I didn't regard it as material.

By the Court: I don't worry about that: I just don't see how you can separate a division and make a corporate identity out of it and prove its individual financial status in a case of

(Vol. XV, p. 56)

that type.

Mr. Reutlinger: All right; this will be by way of

avowal. How far do we go, Judge? We got the fact that he keep separate books for Homes Manufacturing Division.

By the Court: That's right.

Mr. Reutlinger: If the witness were permitted to answer he would testify that for the year 1959 the Division, and the Homes Manufacturing portion of it, would suffer a loss of $1,184,949; for the year following, 1961, the same manufacturing unit suffered a loss of $53,241; for the year 1962 the loss —strike that. For the year 1961 the loss for the same manufacturing unit was $574,486, and for the 1962, the same unit reported a loss of $617,948.

All of these figures are achieved by basing first, net sales, subtracting the cost of goods sold, then other operating expense, giving an operating profit and then accounting for miscellaneous in small figures, other income and expense, including purchase discounts and matters of this kind.

Not by way of exhibit, but by way of clarification I would tender it to be with this testimony, the memorandum from which the witness was refreshing his

(Vol. XV, p. 57)

recollection, to be put with the proof.

By the Court: Just to educate me, I would like to know what theory you think this gets admissible on.

Mr. Reutlinger: All right. We have an allegation of a tie-in contract. Now, in a true, and of course, I am not admitting this is a true tie-in, but in a valid or an actionable, or a bad tie-in, I have the control over one or the other element and having control over one or the other element I can set my price and even transfer it.

Now, let's assume, only for the sake or argument that, in fact, I controlled the money market. I have got a patent on money. I have got all of the money in the country.

Now, the record is replete with the earning capacity and the propriety of the return to the Credit Corporation, which is separate, so we didn't have any big profit there.

We didn't charge twenty-five, thirty-five fifty per cent which we could do if we had a monopoly.

It is implicit in this type of anti-trust action, tie-in contract, I believe, that because we control money and if it is shown we did not control that money to excess

(Vol. XV, p. 58)

profits, uh, serious or not, then we could transfer our profit to the other product which was tied up with it.

Now, I hope to show, or I propose to show by this line of proof that this division, concededly not part of the corporation itself, but historically it has had separate accounting; historically, it has further separated that accounting into this particular Homes Manufacturing Operation and that operation, as we have seen, had the series, during this period, of fairly extensive, based on volume, to moderate losses, so that under a tie-in concept, in transferring control back and forth we are not—we, the Defendants, are not making a killing, whereas if, in fact, we controlled one or the other we could transfer our killing to enormous profits in these so-called house packages which were defective and the proof is not there. This is the purpose of which I am offering it.

By the Court: Well I just wanted to hear it.

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TRANSCRIPT OF PROCEEDINGS

VOLUME XVI

Before Honorable James F. Gordon, United States District Judge, for the Western District of Kentucky, at Louisville, Kentucky, on Thursday, June 25, 1970.

(Vol. XVI, p. 2)

* * * * * * *

By the Court: Now, gentlemen, let me say at the outset I am prepared today to give this enough time for everybody to say everything they want to say because my only desire is to do what I think is right and just about this, so you have got all of the time you want and if I interrupt you or take issue with you it's not that you are incurring my wrath about anything; it's just that some things, that's the only way I can get it through my skull what it is you are driving at.

Now, we first talked the other day that we only have the Reporter here for purposes of the motions and then we would just hear the arguments and then put into the record the Court's rulings on the motions.

I will abide by your desires about it, but it seems to me that it might be advantageous in the event of an appeal for the Appellate Court to have the benefit of—

(Vol. XVI, p. 3)

Mr. Reutlinger: (Interrupting) I certainly have no objection to that.

By the Court: (Continuing) Of whatever insight I give them into my thinking and whatever you'all have said on this occasion.

Mr. Reutlinger: I think that would be proper.

By the Court: I believe maybe that discretion is the better part of valor and we had better let him take it all.

Mr. Anderson: That is fine with us.

By the Court: All right; do you want to make a motion? Who wants to make a motion?

Mr. Anderson: I do.

Mr. Reutlinger: Sooner or later, I am going to. We might let Ken go first because he is Plaintiff.

Mr. Anderson: Plaintiff, at the close of all the evidence, moves the Court for a directed verdict on the liability issues in the case on the grounds set forth in Plaintiff's motion for a directed verdict which was delivered to the Court on

(Vol. XVI, p. 4)

Tuesday, June 23rd, which was the last day of the taking of testimony in this case.

By the Court: Now, that is a directed verdict both on the issue of conspiracy and on the issue of the per se illegality?

Mr. Anderson: Yes, Your Honor. I might elaborate on the motion as written; possibly duplicating some of the things in the written motion, Your Honor, but basically the Supreme Court in this case has stated at Page 5 of its opinion that they didn't have to consider whether we were entitled to a trial on the more general theory which they had already said that we were because they say:

> "For it is clear that Petitioner raised questions of fact which, if proved at trial, would bring this tie-in arrangement within the scope of the per se document."

The Court then goes on to state that, which there is no dispute about, but that the language in the loan agreements is a tie-in language, and there is no dispute about that.

The Court then goes into the question as to whether a not-insubstantial amount of interstate com-

(Vol. XVI, p. 5)

merce in the tied product was affected and the Court, in my judgment, disposes of that as a matter of law, holding first, that a hundred and ninety thousand dollars worth of house

packages, which Fortner Enterprises itself purchased during the year 1961, was not insubstantial—not insubstantial, and also holding that the total amount of sales affected by the loan agreements which were sixty-eight per cent in 1966, seventy per cent—uh, that was 1960, and seventy per cent in 1961 and seventy-five cent of the total sales in 1962 certainly was not an insubstantial amount.

So, we feel that both of those first two elements of the tie-in and the per se violation are really disposed of by the Supreme Court. The same, or stronger evidence, has been presented at the trial.

By the Court: You mean that the tie-in and the not insubstantial amount—

Mr. Anderson: (Interrupting) That's correct, Your Honor. Actually, when we prepared the original computation of the sixty-eight per cent, seventy per cent and seventy-five per cent, we used only the sales in those States where loans were made, but actually, in reviewing the evidence further, there were sales in other states and the answers and the

(Vol. XVI, p. 6)

response to the requests for admissions covers all sales.

In other words, sixty-eight of all sales, so, uh, when during the course of trial I used the larger figures, which amounts to a larger sum actually, uh, than the Supreme Court refers to.

By the Court: You mean larger in the States where loans were made, the percentage of sales would have been greater?

Mr. Anderson: Would have been greater than the stated percentage because it was diluted somewhat because there were sales in other States where they told us they didn't make any loans.

So, actually, uh, we have no way, I guess a mathematician could figure out what the percentage would be, but

obviously they would be higher in the States where loans were made.

This gets us to the third issue or third element of a tie-in arrangment, which is the economic power over the trying product—in this case, loans or financing or credit.

Now, the Court set out various elements of evidence which it considers pertinent to determining the requisite economic power in the tying element.

(Vol. XVI, p. 7)

By the Court: Now, this all goes to the per se liability?

Mr. Anderson: Yes sir; yes sir. The Court points out first of all economic power over the tying product can be severe even though the power falls far short of dominance and even though the power exists with respect to only some of the buyers in the market.

Then, they quote the Lowe case and this is at Page 7 of the Court's opinion:

> "Even absent a showing of the market dominance, the crucial economic power my be inferred from the product's desirability to consumers or from uniqueness in its attributes."

Then, the Court, at Page 8 of its opinion says:

> "Accordingly, the proper focus of concern is whether the seller has the power to raise price or impose other burdensome terms, such as a tie-in, with respect to any appreciable number of buyers within
>
> (Vol. XVI, p. 8)
>
> the market."

Now, Your Honor, we submit on this point that the uncontradicted evidence shows that sixty-eight to seventy-five per cent of all sales of the Homes Division involved loans.

The uncontradicted evidence is that all loans contained a tie-in provision.

Mr. Reutlinger: Almost all, but that's all right.

Mr. Anderson: Well, all loans with the exception of $600,000 worth, which, with the $50,000 here and so forth, isolated occasions, I'm sorry.

The evidence is that the amount of the loans made to assist the Homes Division to achieve these sixty-eight to seventy-five per cent of their sales, uh, were three to four times the amount of the sales themselves.

The evidence is that of the forty-three loans or loan commitments which were made during this period of time, which exceeded $250,000, that—

By the Court: (Interrupting) Each.

Mr. Anderson: Right; that

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twenty-nine of those forty-three, at least, were involved in the special financing program.

The evidence is that the special financing program was a calculated, planned program by the Credit Corporation to aid, uh, the Homes Division in its sales and to aid the Homes Division to increase its share of the market.

Now, I will refer to that further when I talk about the conspiracy to monopolize later on, but this—this evidence is, from their documents, it's uncontradicted in the record.

Now, we submit that—I think that these factors alone, the—in other words, the amount of sales that were affected by the tie-in agreement themselves and, uh, the number of substantial loans which were affected by the tie-in agreements themselves establish the requisite economic power.

I think this is reflected in the Advance Business Systems v. S.C.M. Corporation case which is the Fourth Circuit Court of Appeals, decided in August of 1969, and in which certiorari has been denied by the Supreme Court. This case involved, of course—

By the Court: (Interrupting) Well, I am familiar with the facts of it.

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Mr. Anderson: Yes sir. There is someplace in this case where they hold just exactly the proposition which I am setting forth and point out, uh, that twenty-five—that the Court, in this case, considered it of great significance and actually, as controlling, that twenty-five per cent of the arrangements contained the tie-in clause and, if I can have just a second here, well, on Page 68 under Fortner, therefore, unless the Defendants can show legitimate business reasons for a tie-in the sufficient economic power test of per se illegality is satisfied when it appears that the seller has the power to impose other burdensome terms such as a tie-in with respect to any appreciable number of buyers within the market.

Then they say that this is not a new standard for the Court has previously recognized that extensive imposition of a tie-in may sufficiently indicate a seller's uneconomic controlling over the tie-in product, at least when no other explanation has been offered for the existence of these restraints, and then citing Northern Pacific, and then on the next page, at 69—

By the Court: (Interrupting) Before you go to that—

Mr. Anderson: Yes sir.

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By the Court: In the first paragraph, second, 68, in the case before us the District Court found the tie-in was imposed to (A) increase sales rather than serve a legitimate purpose such as the preservation of good will or the production of a new industry—

Mr. Anderson: (Interrupting) Yes sir; and there is absolutely no evidence in this case that the tie-in arrangement involved here was imposed for any other purpose than to increase sales. There is no evidence that, uh, that it was imposed for preservation of good will, or the protection of a new industry.

This was a long-established business and there has been no testimony by any witness that there was any good will to preserve, or that the purpose of this was to preserve good will.

I might point out to the Court that from the outset of this litigation, I have carefully asked all of the Credit Corporation's witnesses, "Did you involve yourself in prices of the home packages?"

Their uniform answer is, "No".

"Did you involve yourself in the quality of the product of the tied product, the house packages?"

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"No."

Hands off; they had nothing—they weren't concerned about that. So, they can hardly say that the, and there is no evidence to justify—there is no—there is simply no evidence of any legitimate purpose for this other than helping the Homes Division make sales.

By the Court: Well, assuming that arguendo.

Mr. Anderson: Yes sir.

By the Court: Then, you will be willing to stand on that issue on the fact that the increase of sales is the thing and the number of loans is the thing that meets the so-called proper focus?

Mr. Anderson: No, I'd say this is—this is my first point on the econimic power, Your Honor.

By the Court: Un-huh; all right.

Mr. Anderson: What I meant a while ago was that I—I do feel that this point alone could be sufficient, but that there is other evidence which I propose to talk about.

By the Court: I see.

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Mr. Anderson: In terms of economic power—

By the Court: (Interrupting) On economic dominance,

you, number one, in meeting that satisfying that element of per se factor, you point the number of loans and the sole purpose being to increase sales.

Mr. Anderson: Yes sir.

By the Court: And cite this case.

Mr. Anderson: That's the first point.

By the Court: And cite this case as your authority for that.

Mr. Anderson: For that proposition, yes.

By the Court: Okay. Now, when I say, "that case", I mean the Advanced Business Systems—

Mr. Reutlinger: (Interrupting) Fourth Circuit Case.

By the Court: All right; Fourth Circuit Case; we will call it that.

Mr. Anderson: The last point

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on the Advance System Business case, Your Honor—

By the Court: (Interrupting) Yes.

Mr. Anderson: Is at Page 69. They say:

"S.C.M. Service Agreement, as written, explicitly prescribes the tie-in case."

Now, we have that here in Fortner's case; no acceptable business purpose underlies this condition, but as the District Court found, it was incorporated in the contract only to suppress competition and, in footnote 13, they point out that it's the District Court, uh, that approximately twenty-five per cent of S.C.M. Machine owners have lessees in the Baltimore area, had entered into service maintenance contracts imposing the tie-in condition.

Now, we have got almost literally three times that many of all of the Homes Divisions' customers or sales, at least, affected by loan agreements with such tie-in clauses in them.

By the Court: What about footnote 12 on Page 68?

Mr. Anderson: Well, that says,

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of course, that once the existence of a successful tie-in is shown, the Defendant—not the Plaintiff, has the burden of showing a legitimate business reason for imposing the condition. Our point is two-fold there; first, the Plaintiff has affirmatively established in this case that through the Defendant's own documents and the Defendant's own witnesses, that the purpose of making the loans with the tie-in clause in them was to increase Homes Divisions' sales and to aid them in their sales program.

Now, the cases are uniformly recognized that that is not a legitimate business purpose where you impose a tie-in agreement. Secondly, of course, our point is that the Defendant has, uh, has not sustained any burden of proof of establishing any legitimate business purpose.

The case on the legitimate business purpose Your Honor, are cases where quality control is involved.

The best example that I know of offhand is a case that was tried in April out in the District Court in California, the Chicken Delight case where the District Court in that case held that where the Chicken Delight people had tied their paper products and then also elements of what went into making the

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chicken, uh, and the District Court in that, uh, gave Plaintiff in that case a directed verdict on the tie-in.

They told the jury, across the board, "This is an illegal tie-in arrangement', and he said, "There is not legitimate business purpose for the paper products involved."

He said that it was a question for the jury as to legitimate business purpose where quality control is involved in the mix.

By the Court: Right, to make it taste uniform.

Mr. Anderson: Yes, sir; but we have no evidence of that here. The Credit Corporation has claimed all interests in

the quality of the house packages. They have never tried to say, which would be the only way I could see that they could get into quality control—they have never tried to say, "We imposed this tie-in to assure our getting paid back because we knew that this house package was a good quality product."

They have never said that in the first place, which is the only way, in my judgment, they could get to legitimate business purposes and obviously, in this case, they couldn't possibly say that with the plethora

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of evidence on the defective nature of the product.

I just can't see that, uh, anywhere. I think we have affirmatively shown that they didn't have a legitimate business purpose and they certainly have not sustained that burden at all. I don't see, really, a jury issue on that question at all.

Now, the next point that the Supreme Court in the Fortner decision makes—

By the Court: (Interrupting) Now, does this have to do with market dominance?

Mr. Anderson: Yes sir.

By the Court: All right.

Mr. Anderson: If that market power can be established from again going back to the uniqueness of the tying element and its desirability to consumers, uh, now, you have a duplication of evidence to a certain degree here when you talk about desirability to consumers, because, of course, again the very number and volume of loans made is evidence of the desirability to consumers.

The desirability to the Plaintiff in this case has been established. Mr. Fortner testified as to its desirability to him, its unavailability from other sources to him.

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Mr. Horn testified to this effect, to which the Court re-

fers in the Supreme Court opinion, uh, the fact that—the fact that bears on this point—

Mr. Reutlinger: (Interrupting) Which is this, desirability and uniqueness? I have lost you.

Mr. Anderson: Uh-huh.

Mr. Reutlinger: I thought we had covered that earlier.

By the Court: No.

Mr. Reutlinger: No, okay; I'm sorry.

Mr. Anderson: Another fact that bears on the desirability and uniqueness is the law and the fact that banks and savings and loan associations that were federally insured could not make these loans, thus substantially cutting down the source of supply and, uh, this the Court has taken judicial notice of.

Mr. Dobbins' testimony simply was that there was a lot of money floating around that might be available for loans and then Mr. Dobbins testified that he thought there was some hundred per cent financing available, but when it got down to the question of who

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he was talking about, he was talking about two companies, Louisville Mortgage Service and Prudential Life Insurance Company and we have specifically, and the Court is familiar with the evidence from both of those companies to the effect that Louisville Mortgage Company was not making such loans in 1960 when our first loan agreement was made and in 1961 when the second loan was made.

Prudential wasn't making any land acquisition and development loans at all during that period of time and their policy was not to make over seventy-five per cent loans during this period of time, so the only two people, uh, only two companies that the Defendants have come up with where there is a claim that this type of financing was, uh, available from, we have affirmatively shown that it was not correct.

Now, Mr. Dobbins, of course, was, uh, there was a situation where ten years had gone by and it is quite easy for a man to, uh, to be confused, particularly when he is talking—when his information is from other people as to periods of time involved and I am sure that that is what happened here.

There is no question but that in later years, uh, this type of financing under Mr. Horn's testimony

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was made available and, of course, under Mr. Horn's testimony, it was made available because Mr. Reutlinger was kind enough to have that portion of the testimony written up and I have checked it just before I came in to be sure my recollection of his testimony was accurate, but, uh, his testimony was that they had to start making these loans because their customers came in to see them complaining that they didn't want to tie themselves down to a product and, uh, if there is—again, uh, that very situation is an indication of market power on the part of the Credit Corporation.

By the Court: Well, did he say that or did he say that when began making hundred per cent loans there was no requirement that they deal with any particular builder or supplier?

Mr. Reutlinger: I think that, uh, but he said there was a gentleman's agreement that they funnel the permanent financing to him later, embodied in written agreements. I have not reviewed that particular part of his testimony, but I did have it written up, which this gets into a pro-competitive result, but—

Mr. Anderson: (Interrupting) Well, here is what his testimony is and this is at

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Page 8 of Mr. Horn's testimony, starting at the last—on Line 25 of Page 8:

"Mr. Horn, in years subsequent to this period of time that we have been discussing did your Company get into

making hundred per cent loans—hundred per cent land acquisition and development loans?"

"Yes, we did."

"And why was that, sir?"

"Well, really, this particular case that's involved here was the start of our venture into development loan business. We had many of our builder—builder-customers wanted this kind of a situation, but did not want to tie themselves up with a supplier so that they were not free to purchase material where they wanted and so they kept putting pressure on us to try to find—to try

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to go into this type of business so that they could compete with Mr. Fortner who had this type of project available."

The evidence—well, further, on market power, Your Honor, is that—

By the Court: (Interrupting) Well now, you are still under uniqueness?

Mr. Anderson: No sir; I think I have covered that.

By the Court: Okay.

Mr. Anderson: Covered the uniqueness point.

By the Court: All right.

Mr. Anderson: The evidence is that the United States Steel Corporation, of course, established the Credit Corporation. It subsidized the Credit Corporation and their financial statements show that and Mr. Lang's testimony was that they started out with a million dollars worth of capital, but that they had—

By the Court: (Interrupting) Well, now, are you getting into the conspiracy count now

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or not?

Mr. Anderson: No sir; I think this point—this goes to the conspiracy also, but I think it pertains to the per se—

this evidence pertains to the per se point on market power because their own records and their witnesses' testimony is—is to the effect that, uh, the Credit Corporation was established by the United States Steel Corporation, financed by United States Steel Corporation and United States Steel Corporation put a million dollars into this Company to start with to buy stock.

They committed themselves to buy another million dollars worth of stock. They committed themselves to lend according to the Price-Waterhouse statements, uh, almost or approximately thirty thousand dollars. I don't know whether—

Mr. Reutlinger: (Interrupting) Thirty million.

Mr. Anderson: Thirty million.

Mr. Reutlinger: Thirty grand; you won't go for that.

Mr. Anderson: They used the United States Steel Corporation's position to obtain money from banks for this lending. All of this—with

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all of their resources, therefore, of the United States Steel Corporation behind them, uh, we submit, uh, is definite evidence of market power on the part of the Credit Corporation. Your Honor, I believe that covers the principal points on the per se.

By the Court: All right. Now then, I want you to give me about ten minutes and I'll dictate to my secretary my understanding of a replay of your assertions here so that she can type it up for me.

(Whereupon at about the hour of 10:00 A.M. a short recess was taken, reconvening at about the hour of 10:10 A.M. and the following proceedings occurred:)

By the Court: All right; you have one other assertion, you say?

Mr. Anderson: Yes, Your Honor; I have one other big point.

Colloquy

The Supreme Court, in its opinion, gives great significance to the fact that the house packages of the Homes Division were priced higher than comparable package set-ups on a conventional basis. In other words, conventional materials and labor, as Mr. Miles

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testified, to obtain the house in the same position as, uh, with the same components or better than received from the Homes Division as well as the Empire Home package.

Now, there again, is no contradiction as to that evidence of excess of price. The only thing that Mr. Reutlinger accomplished in his cross-examination of Mr. Miles was possibly to reduce the difference from in excess of four hundred fifty dollars to—down to—it might be in the three hundred level.

By the Court: Yes, but—

Mr. Anderson: (Interrupting) But the testimony itself as to the difference in price is not contradicted.

By the Court: Yeah, but your evidence as to the difference in price was established by comparing a concern that went into bankruptcy—

Mr. Anderson: (Interrupting) Many years later, Your Honor.

By the Court: I don't know when it went into bankruptcy.

Mr. Anderson: Mr. Miles' testimony was within the last two or three years, Your Honor, and there is no evidence that, uh, as to what

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caused the bankruptcy.

By the Court: I don't think you have to have, just assuming arguendo that you have done everything you say you have done, I don't think you necessarily have to have every single one of these elements to be successful in what you are seeking.

Colloquy

Mr. Anderson: All right; yes sir.

By the Court: But I don't think you have proved much on this price thing.

Mr. Anderson: Well, I—I couldn't agree with you more, Your Honor, about the first part of your statement that we don't have to have all of these elements.

By the Court: I don't think you do. Now, maybe Mr. Reutlinger can tell me that you do but as to this one, I just thought that it was a kind of a lick and a promise as it were, you know.

Mr. Anderson: Well now, Your Honor, there is one thing that I would point out and that is on the—uh, while the Court may have some reservations about the testimony about Empire Homes—

By the Court: (Interrupting)

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Well now, I think you were stronger when you got onto the conventional.

Mr. Anderson: On the conventional home, there is simply isn't any dispute.

By the Court: There is no evidence in contradiction of what you have proved, right.

Mr. Anderson: Yes sir.

By the Court: That I can recall.

Mr. Anderson: So, this was the other point. I might add that of course the underwriting agreement that, uh, I believe, has more significance from a conspiracy standpoint, but the underwriting agreement does show that, uh, the Homes Division was underwriting these special financing loans for the Credit Corporation.

By the Court: Oh, yes. All right; these are your two contentions you are after.

Mr. Anderson: Yes sir.

By the ourt: Now, is it a fair assumption to summarize

your position on this directed verdict from the Court for per se illegality

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and that you maintain the existence of the tie-in as established?

Mr. Anderson: Yes sir.

By the Court: And (B) that the Supreme Court in the Fortner case laid at rest the issue that a not-insubstantial amount of commerce was affected by this tie-in?

Mr. Anderson: Yes sir.

By the Court: And (C) that market dominance, that is, the focus of the issue to establish the third element of the per se illegality is established by the following—

Mr. Anderson: (Interrupting) I would take, only from a technical standpoint, issue with the Court's use of the term "market dominance."

By the Court: Economic power.

Mr. Anderson: Economic power is, uh—

By the Court: All right; is established by the following: (1) Number of loans made.

Mr. Anderson: Yes.

By the Court: And (2) the fact that they were made for the sole purpose of in-

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creasing sales and (3) that uniqueness and desirability is established by the unavailability of one hundred per cent loans in the area.

Mr. Anderson: Yes.

By the Court: And (4) that the United States Steel's dominant financial position was used by it in the credit market to obtain the credit for its subsidiary, Credit Corporation, to grant the type of loans made by it for the benefit of the Homes Division.

Mr. Anderson: Yes.

By the Court: And (5) that the Defendant has failed to meet the burden of legitimate business purpose.

Mr. Anderson: Yes.

By the Court: Quality control or other elements inasmuch as the evidence supports a position that the officials of the Credit Corporation took no concern or interest in the quality of the product, and (6) that the Steel Homes of United States Steel were priced higher than conventional and competitive type home structures.

Mr. Anderson: Yes.

By the Court: And (7), there

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was—an underwriting agreement existed by the Homes Division guaranteeing loans, made by the land development—made by the Credit Corporation.

Mr. Anderson: Yes sir.

By the Court: Now then, we can go to the conspiracy problem.

Mr. Anderson: All right sir; Plaintiff Fortner moves the Court for a directed verdict on the general charge of conspiracy to restrain trade or commerce, uh, in violation of Section 1 of the Sherman Act on the ground that the uncontradicted evidence establishes that the Credit Corporation was established for the purpose of aiding the Homes Division in making sales of the prefabricated house packages; that affirmative action was taken by the Credit Corporation thereafter to achieve this objective.

More particularly, we are relying upon the evidence appearing in the Finance Committee minutes of the United States Steel orporation and in the Board of Directors minutes of the Homes Division where—

Mr. Rentlinger: (Interrupting) Are you sure you mean Homes Division? We don't have any Board of Directors.

Mr. Anderson: I'm sorry;

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Board of Directors' minutes of the Credit Corporation.

Mr. Reutlinger: Yeah; thank you.

Mr. Anderson: The Finance Committee minutes of the United States Steel and, well, actually that—I believe that the same evidence establishes actually, Your Honor, as a matter of law, a conspiracy to violate Section 1 and Section 2 of the Sherman Act.

In other words, the minutes of the Finance Committee meeting of the United States Steel Corporation and the minutes of the—

By the Court: (Interrupting) Well now, let's hold it right here just a minute.

Mr. Anderson: All right sir.

By the Court: In the Fortner case, Page—I guess it's maybe Page 4.

Mr. Anderson: Page 4; yes sir.

By the Court: Justice Black said: "Plaintiff can still prevail on the merits whenever he can prove on the basis of a more thorough examination of the purposes and effect of the practices involved that the general standard of the Sherman Act have been violated and accordingly, even if we agreed

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with the District Judge that Northern Pacific standards were not satisfied—", and he still says I am in error because you have made allegations that they conspired for the purpose of restraining commerce and to acquire a monopoly.

Mr. Anderson: Yes sir.

By the Court: Okay; now, that is what gives you the right here to move for a directed verdict, on that ground?

Mr. Anderson: Yes sir.

By the Court: Now, the only thing—well, that is of no significance. I read something wrong on the first page of

the opinion. Go ahead; just disregard what I said. You were talking about the minutes and I'm sorry I interrupted you, the minutes of the United States Steel and the Credit Corporation.

Mr. Anderson: And, of the Credit Corporation; both establish and interrelate, of course, that the special financing program was specifically set up for the purpose of allowing the Credit Corporation to make what they describe as commercial type loans rather than exercising prudent

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business judgment as a lender, to, uh, aid the Homes Division in making sales of houses and, more particularly to aid the Homes Division in increasing the volume of their sales.

The testimony of all of the Credit Corporation witnesses, Mr. Rollins, Mr. Lang—testimony of Mr. Lang via his deposition that we read as well as Mr. Lang's live testimony; of Mr. Boyd, who was President of the Homes Division and whose deposition—portions of his deposition were read into evidence, all establish that there was a general combination between these two companies to achieve, uh, this result of increase of sales and that the combination consisted of the Credit Corporation lending money to Homes Division dealers or customers to achieve this purpose.

Now, the special financing program was a particular means that they used and you will recall Mr. Lang's testimony, uh, I bore down on Mr. Lang pretty hard in his deposition about who made the decision to put the tie-in into the loan and Mr. Lang testified that it was an inherent, in the original setting up of the Credit Corporation, that this be done.

Mr. Lang testified that, uh, of course, this

Colloquy

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had been communicated to the Homes Division, that this tie-in was in there; my point being that—that two separate corporations can conspire to create a situation which constitutes a restraint of trade or restraint of interstate commerce by creating a tie-in such as this is and that that in and of itself, is a violation of Section 1 of the Sherman Act where a not-insubstantial amount of interstate commerce in the tied product is involved and that, uh, therefore actually under Section 1 of the Sherman Act as the Supreme Court in Fortner puts it, by looking at, uh—they say, "A more thorough—" talking about a more thorough examination of the, uh, let's see.

Well, it says here, "Plaintiff can still prevail—."

By the Court: (Interrupting) Excuse me a minute.

Mr. Anderson: It says here, as the Court read a moment ago, "Plaintiff can still prevail on the merits whenever he can prove on the basis of a more thorough examination of the purposes and effects of the practices involved that the general standards of the Sherman Act have been violated."

Now, I say that the evidence, uh, that we

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throughly examined the evidence in this case—

By the Court: (Interrupting) You gave me the elements of the Sherman Act.

Mr. Anderson: Section 1 of the Sherman Act says that any combination, contract, or conspiracy in restraint of interstate commerce is illegal.

By the Court: Okay.

Mr. Anderson: And Section 2 of the Sherman Act says that, in pertinent part here, says that any conspiracy to monopolize interstate, any part of interstate trade or commerce, uh, is illegal.

By the Court: All right.

Colloquy

Mr. Anderson: So, there is a concept, Your Honor, under the cases where we got off on a side track before in this case of the so-called rule of reason in, uh, non-per se situations.

My point in this case here is that, uh, the examination of all of the evidence in this case put on by the Plaintiff and the Defendants establishes without question a combination between these two corporations to achieve, uh, a restraint on a not-insubstantial amount of interstate commerce; that the vehicle was the tie-in provision in the agreement.

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This is how they achieve the restraint. My point is that when these two companies are getting together to do this, that you do not get an economic power situation.

By the court: I understand.

Mr. Anderson: But you examine the basic purpose for this restraint and the basic purpose on—and its uncontradicted and the purpose for this restraint is to aid the Home Division in making sales of its houses and the form of the restraint is such that it ties people down tighter than a drum, literally, because they have got on the particular property, which, uh, which is involved in each transaction they have got to use the prefabricated homes.

The effect of this is to preclude Homes Division's competitors from the opportunity to sell prefabricated houses that they might make to these people. It is to preclude them from even building on a conventional basis.

Now, when an agreement says you have got to do one thing—you've got to put prefabricated houses in a particular area, uh, you obviously can't buy anything else there and therefore, that excludes the Homes Division's competitors.

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Also it excludes from the borrower the right and op-

portunity to purchase competitive products. It is a dual exclusion, as the cases have described it and that's why in International Salt, uh, on down, the Court in the first place, it—it had talked about the tie-in arrangements having no redeeming values, really.

By the Court: All right.

Mr. Anderson: Mr. Hamilton calls to my attention the specific language of the Finance Committee minutes which is to attain a minimum distribution of eighteen hundred units in 1959 and such additional distribution as may be feasible.

We get over, uh, then to the next year, for the year 1960 which is the year our loan agreement, first loan agreement was signed and they reaffirm the program there and this time with the undertaking that the special financing program may be called upon to support sixteen hundred sales for 1960 in an effort to assist the United States Steel Homes Division in reaching a twenty-five hundred unit sales objective in 1960 or to support more sales if such objective is exceeded.

So, there was this purpose and objective of this special financing program and we submit that it was

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quite successful from the uncontradicted evidence.

They got sixty-eight to seventy-five per cent of their sales, uh, were involved—these loan agreements. As far as intent is concerned, which is an element of conspiracy, of course, the cases I believe that, uh,—well, the cases indicate that this intention doesn't have to be spelled out by two people getting together and saying, "We are going to violate the anti-trust laws by creating a tie-in," or, "We are going to violate the anti-trust laws by fixing prices."

People don't say it in those terms, but our point on intent that the intent is spelled out in the language which

has just been read; this is what these people intended to do and we have shown how they did it.

I think the other element of a conspiracy to restrain trade is, of course, uh, the extent of the restraint in interstate commerce.

Now, again, that element has been laid to rest in the Fortner case because they point out that this restraint, uh, affected not only the purchases of Fortner Enterprises, but affected the purchases of sixty-eight per cent of the sales of Homes Division in 1959 and sixty-eight per cent in 1960 and seventy per

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cent in 1961 and seventy-five per cent in 1962 and we have those figures before the Court.

This is the extent of the not-insubstantial amount of interstate commerce restrained or, as the Court put it, in some of the conspiracy cases, it's a part—some of the cases point out that it can only be, uh, interstate commerce into a particular city or into a particular state.

Here we have a part of interstate commerce restrained in the millions of dollars.

I, uh, on the conspiracy, further we have action taken as far as the Fortner Enterprises is concerned which again is not contradicted in the record.

Mr. Fortner has testified that in the early part of 1962 he talked to Mr. Dyas of the redit orporation and asked to be relieved of the tie-in element of the loan agreement and Mr. Dyas refused.

The testimony is, uh, at the meeting in Mr. Hamilton's office in June of 1962, relief was requested from the terms of the tie-in agreement and that it was refused.

There is no dispute but that that request for relief was refused in the evidence and we think this is, uh, a significant feature and that this actually, in

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and of itself, by the way, is a violation of the anti-trust laws under the S.C.M. case where the S.C.M. case points out that similar actions were taken by the salesmen of the Company in that case, and if the Court will recall, in that case they said, uh, that number one, the agreement which contained the tie-in was a violation and, number two, the actions of the people attempting to enforce it were in violation of the law and we think that we have the same situation here.

Now, in anticipation a bit, I'm sure Mr. Reutlinger is going to, on this point or at some point here in the course of his arguments, he is going to talk about the loan agreement and again, attempting to argue that that argument which I have always regarded as not being sound, that, "All you have to do is pay us off and you are free of the restriction."

Well now, Your Honor, I think you have disposed of that argument during the course of this trial. That loan agreement, uh, specifically is a contract and it is there and Your Honor indicated that, uh, your ruling on the loan agreement would be that its terms are its terms unless Mr. Reutlinger could prove some contemporaneous construction to vary it and there has been no contemporaneous construction to vary it established, but

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I am just, uh, at this point trying to anticipate what Mr. Reutlinger may try to talk about.

By the Court: Well, wasn't that one of my points in the summary judgment that was washed out by the Supreme Court? They attach no significance to that.

Mr. Anderson: No significance to that at all; that's right, sir. I admit, uh, Your Honor, that, uh, without question it seems a fortiori to me, that if there is per se illegality

of the tie-in agreement, there is automatically a conspiracy because we have established that the Credit Corporation was created—that this type of financing program was specifically established to achieve this and that, uh, therefore, the one follows the other if there is per se illegality.

I could see from—well, I guess that is the sum and substance of our argument on those points, Your Honor.

By the Court: All right; let's take a minute or two and then we will hear Mr. Reutlinger.

(Whereupon at about the hour

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of 10:45 A.M. a short recess was had after which the following proceedings occurred:)

By the Court: Now, is this a fair summation of what you rely on in your motion as to the conspiracy; (A) That a restraint of commerce was created as evidenced by the affirmative action taken by the Steel Company and the Credit Corporation as shown by their minutes establishing a design for the purpose of allowing the Credit Corporation to make commerical loans to increase the Homes Division's profits and sales.

Mr. Anderson: Yes sir.

By the Court: And (B) that the vehicle used to effect this was the illegal tie-in arrangement and (C) that the basic purpose of such was to make sales and (D) that the form of the tie-in restrains trade inasmuch as it ties people to the required use of the product of one of the conspirators.

Mr. Anderson: Yes.

By the Court: And (E) that the effect of the arrangement was dual in nature in its exclusion because (1) it precluded competitors from selling their products to borrowers and (2) it precluded the borrowers from resorting to the construction of con-

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ventional type homes on the property effectively.

Mr. Anderson: Or other type homes.

By the Court: Right.

Mr. Anderson: Precluded the borowers from their free choice in the market as to the type of house they wanted to build or buy.

By the Court: All right.

Mr. Anderson: There would only be one comment there, Your Honor, and that is, you used in either the first or second points the words "illegal tie-in" and my point in the conspiracy is that, uh, you don't have to have a per se illegal tie-in still to have the tie-in under—the tie-in can still be under the conspiracy as, uh, as the vehicle of the conspiracy.

By the Court: Right; that the intent to restrain—restraining commerce embraced within the U. S. Steel Credit Corporation's expressed intention by itself to increase sales and profits and the effect demonstrates restraint on commerce inasmuch as during the period at issue sixty-eight to seventy-five per cent of all sales of homes were related to the financial arrangements in some manner and further relief

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was refused to Fortner from the provisions of the tie-in as was described in the S.C.M. case.

Mr. Anderson: Yes sir.

By the Court: Okay. All right, Mr. Reutlinger.

Mr. Reutlinger: Read me that again, Judge, if you don't mind.

By the Court: Yes. You want a copy?

Mr. Reutlinger: No sir.

By the Court: The effect demonstrates restraint on commerce inasmuch as during the period at issue, sixty-

Colloquy

eight to seventy-five per cent of all sales of homes were related to the financial arrangements.

Mr. Reutlinegr: Yes sir; that's right.

By the Court: Further, Fortner was refused relief.

Mr. Reutlinger: All right; Judge. If the Court please, as much as I dislike to do so, taking our text from the majority opinion in this case as the law of the case, my obvious disagreement with the opinion has nothing to do with what we must do today.

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I am not attempting to minimize or disregard the opinion from the Fourth Circuit as to what this case says in the context of the case it had before it, but I don't believe by any stretch of the imagination, uh, this Court sitting in this case, can do otherwise than follow what the Supreme Court has told us the law of this case is.

Now, the reason I make that precise point at this time is to take, initially, and without going into detail which I will do briefly in a moment, the opinion of Mr. Justice Black, and at Page 8 of the affidavit put forward by Petitioner, being Mr. Fortner, clearly entitle it to its day in Court under this standard, and again at Page 10, the possibility of market power over borrowers in the credit market to entitle petitioner to go to trial on this issue and the concluding paragraph which is very short says:

> "The judgment of the Court of Appeals is reversed and this case is remanded with directions to let this suit proceed to trial."

Without further qualification, Mr. Justice Black did not tell this Court to assess damage; did not tell this Court that it could assess damage. It

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said, "Let this case proceed to trial."

Now, let's see what the Supreme Court had before it

without contest. Admittedly and truthfully, without inference that there was going to be contrary proof when it made this pronouncement, "Let it proceed to trial", and I might point out to the Court that it said, "Based on these affidavits without contest", and the Supreme Court knew that we had sixty-eight to seventy-five per cent of the loans related to sales, without contest and dispute by affidavit, inference or otherwise, uh, substantially all of the loans involved had a tie-in agreement although I hasten to point out the record is a little bit silent on what those terms were.

We may infer and I perhaps suspect that they were generally the same as Mr. Fortner's, the Supreme Court had before it without contest or dispute the dollar volume of the loans.

The Supreme Court had before it without contest or dispute the special financing arrangement on a certain proportion of the loans since that quarter of a million dollar loan commitment saying what Mr. Anderson read.

The Supreme Court had before it without dispute

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or contest all of the corporate records which Mr. Anderson read to you a moment ago, curiously enough out of the Supreme Court Appendix or record. So that the Supreme Court had before it every essential fact on which Mr. Anderson now relies without any inference that there was any dispute of those facts. They were undisputed in the record then. They are undisputed in the record now.

Now, on the strength of that, the Supreme Court did not tell this Court:

> "He has not only made out a prima facie case; he has made out a case to which there can be no rebuttal, Judge Gordon; add it up, let the jury add it up and tell us what the bad news is."

No, he said, "Let it proceed to trial." That is what I think this Court has to do.

Mr. Anderson asked for a jury trial. He has got a jury trial. Indeed, Judge, we are back where we were almost in July of 1969 when we were out here on a pretrial conference.

At that time, if my recollection serves me, Mr.

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Anderson took a position that we had a per se violation and this general violation and then he said, "I want a trial", and gave these same reasons, the tie-in contract was undisputed, and my response to that then and my response to that now is there is no reason to waste this Court's time and this jury's time on proving that which we have not denied.

If this is your position, then you, Judge Gordon, at that time should have said, "We are going to trial; try only damages", and Mr. Anderson backed off because he knew he was wrong then and he is wrong now.

Moreover he is weaker now than he was then because his affidavits, uh, his affidavits were a little stronger than the state of this record. Now, that doesn't shock me and that is proper.

I am being critical, but they are not quite as strong and therefore we still have various jury issues. Now, let's look at the Court's summary of the matters that Mr. Anderson presented.

The first, of course, is the existence of the tie-in contract on the desirability and unique per se question. There was this; we know it.

The effect on commerce being established, I

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REPORTER'S NOTE:

Due to an error in numbering contains no page sixty-three. Proceed to next page.

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arguing to me that those weren't questions of fact; that they were admitted facts.

Mr. Reutlinger: Yes sir; absolutely, and they were admitted earlier by me.

By the Court: And that there was no burden on him to prove them at the trial.

Mr. Reutlinger: No sir; still hasn't been.

By the Court: And that the tying arrangement, if it was per se illegal now, was per se illegal then.

Mr. Reutlinger: Yes sir, he has not—he had no burden to prove, and I will go down that list again with regard to the conspiracy which is under the general charge.

By the Court: Well now, in the first place, to me, wouldn't you have jumped out of your shoes if I had said, "We are going to try it as to damages only."?

Mr. Reutlinger: I wouldn't have liked it, but I have accepted it quite gracefully because I would feel then as I feel now that I would have error; I would have argued against it, of course.

Now, let's go down them one more time and I

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will summarize, A, B, C, D, E F, G, and H, the Court's summary of Mr. Anderson's argument on conspiracy which has to be present in both, in any event.

By the Court: Yes.

Mr. Reutlinger: He says there was a restraint of commerce as reflected in the minutes of the various corporations involved. We did not deny at any time the authenticity of those minutes which, and all this, remember, we are going back prior to the Supreme Court—we did not

attempt to show by affidavit at the time of the original summary, Judge, that there was a defect, that these weren't true.

The Supreme Court knew this. Now, that's the restraint on commerce as shown in the minutes.

The next is contract. The loan agreements specifically admitted by me. We didn't really have to admit it as long as we didn't deny it—it would be enough, but we specifically admitted it by me.

My No. (C) is garbled, Judge; what was (C)?

By the Court: (C), that the basic purpose was to increase the sales of the Homes Division.

Mr. Reutlinger: Well, which is found in the minutes again and that's why I didn't—

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this is there without controversy.

(D), that whatever the effect of the trade that was found in the contract, and that was before the Court without contest.

Then, (E) to exclude competition from selling to other borrowers. We have argued this pro and con, but the language is before the Supreme Court without contest which we can't get around and don't attempt to get around; there it is. It has been there ever since we signed the loan agreement.

You said (F) and again I think it is repetitive. You maintained something about the restraint; restraint before the Supreme Court without contest. Then the percentages during the period and all this was admitted; it was admitted at the time the affidavits were made; it was admitted all the way down and then of course, relief refused is found in the affidavit about the minutes of the meeting of June 5th.

He didn't have to prove any of these things now and he didn't have to prove them last July when he told this Court that.

By the Court: But, Al, when you were before the Supreme Court they specifically said if you could prove it did, therefore a

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legitimate business purpose, you were home free and therefore there had to be a factual trial; gave you that opportunity.

Mr. Reutlinger: Well, we get back to the tying concept. Of course, that is quite a narrow issue, but this would preserve a jury trial and then finally, or not finally, because I want to talk maybe a little more, if the Court has other questions but Mr. Anderson made the statement that these contracts are in restraint of trade and I believe we have the question of a reasonable restraint of trade and this could be a jury issue too.

See, all of these things, Judge, are admitted. I can't argue we didn't make the contract.

By the Court: I understand; I know that.

Mr. Reutlinger: All right; but now I can argue reasonableness to the jury and the Court has to give an instruction on reasonableness. The case is hov old, but every contract is in restraint of trade, literally read. The Sherman Act is appalling, so the Supereme Court says, "Well, what the Congress meant to say was reasonable restraint of trade."

Now, that is an issue if we are really seeking

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for jury issues because I don't have to prove that; that is admitted—long since been admitted.

Does the Court want any—I mean this power position?

By the Court: Oh, yes, well, go ahead.

Mr. Reutlinger: Well, I can't repeat myself over and over again. If, even taking what I appreciate may be the Court's leaning, what do you do with the advertising? What do you do with the phrase, "Reasonable", as whatever the case was years ago? That has got to be—these are not unreasonable per se.

By the Court: Now, when you get to the word, "reasonable," would it be your position that a Court could give a directed verdict on a conspiracy?

Mr. Reutlinger: No sir.

By the Court: On a restraint?

Mr. Reutlinger: You have got—here you get into—let's go back to the Northern Pacific, for example, which is your per se. You had there demonstrated control over a unique product, land.

By the Court: Right.

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Mr. Reutlinger: And similarly here, he has not really demonstrated our control over money or credit; hasn't done that.

He has, as a matter of fact, the only thing I have gotten from the record so far on that point which could be a jury issue, and I think it is, is that we are a pretty big Corporation.

Now, that doesn't follow because of size that we can dominate the money market and then, Mr. Lang tell us regardless of the size we are at the mercy of the money lenders, like everyone else, as are our competitors.

Then we go down to this thing that the Supreme Court mentions, I believe, at Page 4, which is your general conspiracy and your general concept—here it is; a Plaintiff can still prevail on the merits whenever he can prove on the basis of a more thorough examination of the purposes and effects, and I emphasize the "effects of the practices

involved that the general standard of the Sherman Act have been violated.

Now, let me just digress for a moment and see what the general standards of the Sherman Act for this is the theory of the anti-trust laws that the long run advantage to the community. not to Fortner, not

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to me, not to you, but to all of us, to the community, depends on the removal of restraint upon competition, Standard Oil v. United States, 377, U. S. Supreme Court.

Now, when we get into this, and this is what the jury can consider, the long range effect on the community and here they say the purpose of the practices involved, Judge, and then end up by being pro-competitive for the public benefit, both with regard to home packages.

There was one new dealer with our product which the public may or may not want, but they had a choice where none existed before and, as they say in that case, a long run effect for the community—why, we broke the credit barrier that existed for Fortner and others in this whole market—such barrier, in fact, existed.

Now, how do we reconcile that language in the Fortner case with that language in the earlier Supreme Court opinion which says it is not Fortner we are worrying about; it's not really our competitors we are worrying about; it's the public we were worrying about.

So, we have then either in the conspiracy or the per se thing two definite jury issues; what were the effects of this arrangement insofar as it affected the community.

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Plaintiff can still prevail on the merits even though he misses under the illegal per se on the basis of a more thorough examination of the purposes and they don't say, "Or", and effects of the practices involved.

What are the effects? Can I argue that to the jury? I think arguing that with some merit, with some logic, uh, to give a directed verdict would deprive me of that argument. Then, we go back to the control over money and he has demonstrated none of that from your illegal tie-in.

I think I am entitled to a directed verdict on that point alone—the other way around, but I won't labor that at this time; that's a jury issue there. I should be entitled to argue.

This is where his affidavits are a little more stronger than the proof and they said to send it back for trial. They don't even give an opinion it would be illegal per se on trial; they say, "Let's find out what went on."

We know what went on now. We know our competitors made us get into this money market. We know we did. Mr. Horn says, "Well, I went into it later." He is certainly not on our side.

We know that there was a dealer which didn't

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have U. S. Steel Homes to offer which did—at least the public had a choice on that and these are jury issues, Judge.

Mr. Anderson: All right sir; first of all, Your Honor, let's look at this case from a procedural standpoint. In July of 1966, eleven days before the trial, they made a motion for a summary judgment. They filed affidavits as to what they thought was pertinent to get this summary judgment. We filed affidavits to counter this. We made no motion for summary judgment.

It is our position then that it was a case that had to be tried to give both sides the opportunity to cross-examine the other witnesses and bring out what the facts were.

Our position then was that we were confident that at the close of all of the evidence that we would and the Court will recall back then I was saying that I felt we

would establish really, as a matter of law, a per se violation.

So, the case goes up to the Supreme Court. The Supreme Court procedurally cannot say, uh, that you have to give us a directed verdict because we have no motion for summary judgment or a summary judgment

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because we have no motion before them. I asked them to—to say in a little stronger language than they did, really, what the situation ought to be, but what did they say?

They said if we proved what is in the record, as I read the language to which the Court has referred, if we proved what is in the record we have got a per se violation. My point is that we have proved what was in the record.

They gave them an opportunity to prove something about legitimate business purposes. I say they haven't proven any legitimate business purpose as decided by the cases, so here we are.

Now, Mr. Reutlinger talks about Page 10 at the close of Justice Black's discussion about the economic power point. He says this:

> "We therefore conclude that the showing made by the Petitioner was sufficient on the market power issue."

This is the showing and I think even a bit stronger, that we have in the record now as a result of this trial, more than we had before. That's why I have been saying that from a procedural standpoint, uh, they could have made, I thought, the same complaint

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that if I had made a motion for summary judgment before this case came to trial on liability they would have had the same complaint that, or a part of the same complaint that I had when we went up before.

So, here we are. My position was that we try the case; we get the evidence before the Court and the jury and that, to me, is what the Supreme Court's opinion is saying; it's just there and that's why, uh, I think that, uh, now, Mr. Reutlinger says all these things were before the Supreme Court.

They were before the Supreme Court and the Supreme Court commented on all of them. I guess if the Supreme Court had taken everything that was argued there and made a definite statement about it, its opinion would have been forty pages longer than it is, but so, if Mr. Reutlinger, if I understand his argument correctly, is saying that I am right on every point that I made, but I have proven all these things, but that because the Supreme Court didn't say you had to give me a directed verdict you don't have to, I mean that, in sum and substance, seems to be what Mr. Reutlinger's argument is.

Now, on this business of this footnote to which he refers, you can't take a footnote by itself

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without referring to the language in the opinion where the footnote is cited. Now, that, and this sentence, uh, is quite clear and it says:

> "A not-insubstantial amount of commerce be involved—"

and makes no reference to the scope of any particular market or to the share of that market foreclosed by the tie, "Hence, we colud not approve of the trial judge's conclusions on this issue even if we agreed that his definition of the relevant market was proper."

So, what they are saying there is that you don't have a concept of relevant market at all, but in there they go on in the footnote to say that if you did have a concept of relevant market it wouldn't be land, but it would be per-

centage of houses involved and that's what the footnote means.

It is an aside that they are putting in here, really for people's benefit in the future where, in other cases, which of course the Court knows that they do all along just as they did in the Lowe case, on the uniqueness point and that's the uniqueness in the Lowe case was originally raised, not because so much it had to be applied in the Lowe case, but for guidance for us in the future so that's the same thing that they are

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doing here.

Reasonableness, the whole purpose and the whole idea of the per se contract is that you do not get to the rule of reason in a per se situation. You don't get to the point of how much it affects competition, actually when you're talking about a per se case, rule of reason only applies where, as the Court points out, or this Court doesn't, but the other cases do, points out a place where you are not talking about a per se violation.

My point is here that we have evidence in this record that establishes first, on the per se point, that the extent of the restraint via the loan agreements, the amount of sales affected by those loan agreements from their own admission establishes, as Justice Black says, a restraint on an appreciable number of buyers.

So, we have the very extent of restraint in the record and it proves our point about per se.

He says, and as I point out, the rule of reason does apply, uh, when you are not talking about a per se violation, so he has got to be talking about the rule of reason under the law only in terms of the conspiracy charges and my point on the conspiracy charges is that this same evidence of the extent of the tie-ins does establish and eliminate the reasonableness question

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there.

So that, uh, under Mr. Reutlinger's position, I think he is really saying to the Court that we have got a per se violation here.

Mr. Reutlinger: Judge, if I can be brief, which I hope I can, I will close with this observation which, fortunately for me, is not, "Reutlinger on the law of this case." Mr. Buchanan has called this to my attention in the majority opinion and I wish we could substitute the minority part of it, but that's beside the point.

> "We do not mean to accept Petitioner's argument that market power can be inferred simply because the kind of financing at times offered by the attending loan company are 'Unique and unusual,' we do mean, however, that uniquely and unusually advantageous terms can reflect a creditor's unique economic advantage or his competitors'—"

and that's for somebody to decide a fact, not the Court,

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and then it goes on to say:

> "Summary judgment in anti-trust cases is disfavored",

and I presume that they are being equally, uh, that remark has to be equally applied to both Plaintiff and Defendants, and then on Page 10:

> "It may also be, of course, that these allegations will not be sustained when the case goes to trial. It may turn out that the arrangement here involved serves legitimate business purposes, advertising, and that U.S. Steel's subsidiary—",

and incidentally, they don't say anything about the Steel Corporation, "—does not have a competitive advantage in the credit market."

Well, we certainly have some proof that we don't have a competitive advantage. The jury may not believe it, but I bet they are entitled to listen to it and with that in mind I don't see how this Court can give a directed verdict on the issue of liability.

I can see how it would submit instructions, but they say these things. We have produced the

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witnesses who gave some basis for a different decision other than Mr. Anderson and advocates and I think it is a fact—I think we are entitled to let the jury consider it; simple as that.

By the Court: What is the fundamental test of when the Court should give a directed verdict?

Mr. Reutlinger: When reasonable men cannot differ from what they have heard in the testimony, admissible testimony on the witness stand. How reasonable men could conclude that Mr. Lang—he is a Company man, but he certainly is entitled to some weight—reasonable men would conclude that Mr. Lang's opinion based on his knowledge of the money market generally, based on his familiarity with our operation, the operations of banks and so forth, they could conclude that in fact, the—I will paraphrase it from the context of what I just read: They could conclude that U.S. Steel's subsidiary does not have a competitive advantage in the credit market.

The jury could reach that conclusion and, of course, they could reach the conclusion Mr. Anderson's advocates infer—they could reach the conclusion that because Fortner says he couldn't find it in the market—

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I argue this only by way of argument, that we did have control.

Let's concede that they could infer that and I don't believe that is proper, but okay. They also could reach the

conclusion based on Lang's testimony and that of Pearson that we did not have a competitive advantage in the credit market so this goes to this tie-in; both elements must be made, not just one, and then back to what they say:

> "Plaintiff can still prevail on the merits if he can prove on a more thorough examination the purposes and effects of the practices involved that the general standards—",

and they are not talking about anything specific, just the aura that the general standards of the Sherman Act have been violated and then the Supreme Court tells this Court and every other court that general purpose is to aid the community—the general purpose, and on that aspect of the Plaintiff's claim, the jury could well find that the effect, like the Supreme Court says, should be examined of the general purpose or the general standards for the benefit of the public at large, the community, or however they phrased it in that Standard

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Oil case, was beneficial.

Take Fortner at his word, that we did control credit at that time although we have proved to the contrary by giving him this extra ordinary, according to Mr. Anderson, largess.

We made others who had money to lend—of course, this militates against any concept of uniqueness because if it's unique they couldn't do it, but they did it. Mr. Horn, their own witness, says, "We did it." So that, one, the two points that we have been discussing, and we haven't even touched on monopoly yet, the element or illegal restraint or general concept, the jury has something to think about based on the evidence before them. I think you have got a jury case here, Judge.

By the Court: Well, we will come back at 1:30, gentlemen and see where we are.

(Whereupon at about the hour of 12:05 P.M. a luncheon recess was taken, reconvening at about the hour of 1:24 P.M. and the following proceedings occurred:)

By the Court: Now, the

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Plaintiff has made a motion for a directed verdict as to the issue of the per se illegality of the tie-in arrangement in question and, secondly, for a directed verdict on the issue of the existence of a conspiracy in violation of the Sherman Act and the Court sustains both motions.

Now, genelemen, I think that we have got to decide or discuss here, and I want your reaction to what—well, I will express it this way; I think that I should say to the jury before the arguments are made, in substance, that normally they would be, in the trial of a case of this type, they would be required to make certain findings relative to the application of the law, anti-trust laws, under the fact as developed in this case, but that the Court has concluded that as a matter or law that is not an issue properly to be determined.

Mr. Reutlinger: I think you have to dispose of it in some manner.

By the Court: Yes, and that accordingly, their function will be solely to hear arguments now from Counsel directed toward the damages, if any, they believe, that the Plaintiff has suffered from loss of—

Mr. Reutlinger: (Interrupting)

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Well now, Judge, in that regard—

By the Court: (Interrupting) That is the next thing I want to get to here now because I know we are going to

have the issues of the legal ramifications of the issues of what damages the Plaintiff is entitled to.

Mr. Reutlinger: All right. Now, Judge, before we do that and this is obviously not going to take a great deal of the Court's time, but in view of your ruling, I certainly would like to make motions myself.

By the Court: All right, sure.

Mr. Reutlinger: And the Defendants, by Counsel, at the conclusion of all of the proof, renew their motions for a directed verdict.

We will not burden the record with our specific reasons at this time in view of the Court's earlier ruling on the Plaintiff's motion for a directed verdict save to say that with regard to the Section 1 violation, it would appear that there has been a deficiency in the Plaintiff's proof in that the Plaintiff has not advanced its cause on the element of economic power over the tying product, but instead, the proof there from the

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Plaintiff's standpoint can only show that no inquiry was made whatsoever regarding the status of the defendant Credit Corporation's economic power with regard to credit or the existence of any similar financing available to the Plaintiff at the times in question.

The Defendants through their witnesses, have told the Court that first, there was finances or credit terms or credit arrangements similar to that afforded Mr. Fortner or the Fortner Enterprises in this instance, and by other witnesses, some of whom were the same as on the previous point, have told the Court in an affirmative manner that there were no competitive advantages to the Credit Corporation or, for that matter, to its parent, United States Steel Corporation, in the marketing if that is a good phrase, or use of credit.

And, finally, on this specific point, bearing in mind the general purposes of the anti-trust acts, the Defendants have shown the Court by uncontested proof, albeit opinion evidence, that the ultimate effect of the arrangement under scrutiny, instead of being anti-competitive, was instead, pro-competitive in that it both offered the buying public the opportunity to buy a different product, that is, United States Steel

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homes, and if, in fact, there was a barrier to the free use of credit, which fact we still dispute, the barrier was broken by the arrangement in question, not—not only is this founded on the opinion evidence of Mr. Pearson, but of course, the direct testimony of Mr. Horn who, in the local market, testified I believe in June of 1962 that he or his Company and others, mentioned in that regard specific building and loan associations, at Page 39 of his testimony as reported at this time, did in fact then in June of 1962, offer direct land acquisition, one hundred per cent land development, one hundred per cent financing.

As to Section 2 of the Sherman Act which, as we understand it, deals with monopoly, there appear to be as we read the cases, four separate and distinct elements, first of the element of conspiracy to exclude competitiors from the relevant market and that as a result of this, the Defendants here were empowered to raise prices without regard to competitive forces.

There does not appear to be any evidence in the record which would further this element.

Secondly, that the Defendants here acquired the ability to exclude the competitiors to it by the loan agreement in question, or similar agreements.

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Thirdly, that it was the specific intent of the loan agreement to monopolize the market and to destroy competition

and that it served no other legitimate business purpose and finally, and this is the fourth element, appears to use to be determinative of any possible doubt in the Court's mind on the foregoing three in that the Plaintiff must have been injured under Section 2 of the Sherman Act as a direct result of the monopoly or the monopolization or the attempt at monopolization.

It must be borne in mind that with regard to Section 2 of the Sherman Act as distinguished from Section 1 of the Sherman Act, the proof there as to monopolization must be fact-proven by a preponderance of the evidence.

It could not be established by economic theory, assertion, or assumption as opposed to the Section 1 law which appears to deal more with the effects or results as opposed to direct facts.

Turning now very briefly to the fourth element about damages directly resulting from the monopoly charge under Section 2, it would appear that the only possible basis for damages here as distinguished from the claimed loss of profits because of the illegal

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restraints or alleged restraint under Section 1 of the Sherman Act, would be that the Plaintiff was compelled to buy for these two hundred nineteen lots our home packages, Defendants' home packages at unreasonably or artificially high prices.

Without going into the quality of the proof or the defense on that point, the record here shows that although the general allegation is made in the amended complaint which is the one under which the claim is now made, there is no claim for money damages under that complaint although the Plaintiff, by a second amended complaint, sought to claim money damages on this point.

Colloquy

It then elected to abandon it when faced with a further delay of this case or an immediate trial, but for whatever reason, led the Plaintiff to make that decision. There is not even a claim for damages directly related to the monopoly as opposed to the possibility of damages arising from the Section 1 violation for loss of profits and the differential in land costs from the foreclosure.

By the Court: All right.

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TRANSCRIPT OF PROCEEDINGS

VOLUME XVII

Before Honorable James F. Gordon, United States District Judge, for the Western District of Kentucky, at Louisville, Kentucky, on Monday, June 29, 1970.

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(Vol. XVII, p. 2)

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By the Court: Good morning, ladies and gentlemen; the Court has this statement to make to you preliminary to our proceeding today; in a complex trial such as this one has been, brought under the anti-trust laws, many issues of law are presented for decision along with issues of fact which you have so patiently and attentively listened to over the past several weeks of trial.

The function of the jury is to determine the issues of disputed fact, however it is the sole province of the Court to decide those matters which may be decided as a matter of law consistent with the responsibilities of my office and the legal precedence and authorities which have been presented for my consideration.

You have patiently heard all of the evidence and I wish to assure you that I and Counsel and the litigants are grateful to you, however after hearing and reviewing all of the evidence in this case and fol-

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lowing a number of discussions with the attorneys for both sides I have decided several issues as a matter of law.

The arrangement whereby the Defendants, the Steel Corporation and the Credit Corporation required the Plaintiff, Mr. Fortner, to purchase and erect in its Golden Meadows Subdivision only prefabricated house packages purchased from the Homes Division of the United States Steel Corporation is what we call in the law a tying arrangement.

Court's Instructions

The Defendant, United States Steel Homes Credit Corporation possessed sufficient economic power to induce its customers to purchase the tied products, the house packages, and a not-insubstantial dollar volume of interstate commerce in the tied product, and has been adversely affected.

The Court therefore holds, as a matter of law, that this particular tying arrangement is illegal under the anti-trust laws of the United States and both Defendants, the Steel Corporation and the Credit Corporation are responsible for it under their conspiratorial agreement.

Accordingly, I instruct that the juror, Mr. Manion Johnson, came forward and sign on your behalf the

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directed verdict in favor of the Plaintiff against the Defendants on the issue of liability.

Will Mr. Johnson come forward and sign this verdict, please.

(Whereupon the juror did as requested at this point.)

By the Court: Now, if you will, take that and date that today, please sir.

(Whereupon Mr. Johnson did as requested.)

By the Court: Now, as a consequence of my ruling on certain matters, as a matter of law, and Mr. Johnson having pursuant to my direction, on your behalf, signed the directed verdict on those issues, as a consequence, the issues left for your determination this morning after argument by Counsel are whether such actions by the Defendants, the Steel Corporation and the Credit Corporation, caused the Plaintiff, Fortner Enterprises Incorporated damage and if so, the amount of the damage and for that reason, the arguments of Counsel will be limited to those issues.

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Court's Instructions

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By the Court: Ladies and gentlemen of the jury; the Court will give you these instructions now; you, as jurors are the sole judges of the facts with respect to the issues tendered. You are duty-bound to follow the law as stated in the instructions of the Court and to apply the law so given to the facts as you find them from the evidence before you.

You are not to single out one instruction, standing alone, as stating the entire law, but you must consider my instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law regardless of any opinion you may have as to what the law ought to be.

It would be a violation of your duty to base

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a verdict upon any other view of the law other than that given to you by the instructions of the Court. Statements and arguments of Counsel are not evidence in a case unless they are made as an admission or stipulation of fact.

When the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must accept this stipulation as evidence and regard that fact as conclusively proven.

The evidence in this case consists of the sworn testimony of witnesses; all of the exhibits that have been received into evidence; all facts that have been admitted or stipulated; all facts and events which have been judicially noticed and all applicable presumptions stated in my instructions.

Any evidence as to which an objection was sustained by the Court and any evidence ordered stricken by the Court during the trial must be entirely disregarded. You are only to consider the evidence in the case, but in your con-

sideration of the evidence you are not limited to the bald statements of the witnesses.

On the contrary, you are permitted to draw from the facts which you find to have been proven such reasonable inferences as may seem justified in the

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light of your own past experiences.

In order to prove the essential elements of the Plaintiff's case, the burden is upon the Plaintiff to establish by preponderance of the evidence in the case the following facts:

No. 1, that the Defendants have violated the anti-trust laws of the United States.

The Court has already directed a verdict in the Plaintiff's favor on that point.

Second, that the Defendants' violations were a proximate cause of some injury and consequent damage sustained by the Plaintiff in its business and/or its property.

To establish something by a preponderance of the evidence means to prove that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence as when considered and compared with the evidence opposed to it, has more convincing force and produces in your mind a belief that that which is sought to be proven is more likely true than not true.

You must determine whether the anti-trust violation was the direct and proximate cause of injury and damage to the Plaintiff's business and property.

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An injury or damage to Plaintiff's business or property is proximately caused whenever it appears that the anti-trust violation played a significant part in actually bringing about or causing the injury or damage and it further appears that the injury or damage was either a direct result or a reasonably probable consequence of the anti-trust violation.

If, under these instructions you should find the Plaintiff is entitled to a verdict for damages, the law provides that the Plaintiff is to be fairly compensated for all damage, if any, to his business or property which was proximately caused by the Defendants' conduct in the violation of the anti-trust laws.

The amount of your award, if any, is to include all damages suffered by the Plaintiff because of lost profits, that is to say, profits which the Plaintiff would have made but for the violation by the Defendants of the anti-trust laws.

If you find that the Plaintiff has, in fact, suffered damage to his business or property such as a loss in profits proximately caused by the illegal conduct of the Defendants complained of then the circumstances that the precise element of the Plaintiff's

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damages may be difficult to ascertain should not affect the Plaintiff's recovery, particularly where the Defendants' wrongdoings have caused the difficulty in determining the precise amount.

On the other hand, the Plaintiff is not to be awarded remote or purely speculative damage. An allowance for loss of profit may be included in the damages awarded only when there is some reasonable basis in the evidence for determining that the Plaintiff has, in fact, suffered a loss of profits even though the amount of loss may be difficult of ascertainment.

In arriving at the amounts of any loss for profits sustained by the Plaintiff, the jury are entitled to consider any past earnings of the Plaintiff in the question—in the business in question as well as any other evidence based upon that issue.

Your whole award on account of lost profits is not to exceed a sum of $197,000, the amount claimed.

In arriving at the amount of the award you should, in addition to lost profits, include all damages suffered by the Plaintiff for loss of its property, if any, which you may believe was proximately caused by the Defendants' conduct in the violation of the anti-trust laws, not to exceed on this account, the sum of

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$52,737.31, the amount claimed.

In considering this latter theory of damage, you are not to consider the fact of the foreclosure sale itself or the sale following it. The record here shows that the Plaintiff first brought the suit and the Defendant Credit Corporation thereafter counter claimed to collect its debt and to foreclose its mortgage on the property.

Under the rules of procedure it was required to do this or lose its right to collect the money it had earlier loaned to the Plaintiff to buy the property. However, if you find that the Plaintiff suffered a loss in the value of its property as a result of the foreclosure and that loss, if any, was caused by the Defendants' anti-trust violation then you may award the Plaintiff such sum in damages as you believe him entitled to receive, not to exceed the sum last above mentioned, $52,737.31.

When you retire to the jury room to deliberate you should first select one of your number as foreman and he or she will sign your verdict for you when it is agreed upon and he or she will represent you as your spokesman in future conduct of this case with this Court.

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When you retire to the jury room after the selection of your foreman you should first determine if the Defendants' violation of the anti-trust laws has been a proximate cause of any injury to the Plaintiff's business or profit.

If your answer to that question is no, then you should return a verdict for the Defendants, but if your answer is

yes, you should then return a verdict for the Plaintiff for such damage to Plaintiff's business or property as you find has been proximately caused by the conduct of the Defendants in the violation of the anti-trust laws.

The Court wishes also to caution you that if it becomes necessary for the jury to communicate with me during its deliberations or upon its return to Court respecting any matter connected with the trial of this case you should not indicate to me in any manner how the jury stands numerically or otherwise on the questions that are presented. This caution the jury should observe at all times after the case is submitted to it until it has reached a verdict.

In connection with the Plaintiff's claim for damages or account of lost profits and/or damages suffered by the Plaintiff for the loss of its property,

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if any, you should remember that the law requires that the Plaintiff make a reasonable effort to minimize its damages, that is, to avoid losses.

If you believe from the facts in this case that the exercise of such resonable effort would have been productive of such a result and further, be it remembered as a matter of law that neither A.B. Fortner, Jr., nor any of the Corporations which he owned or controlled, not parties to this litigation were under any duty or obligation to contribute additional capital to Fortner Enterprises Incorporated during the time about which you have heard in the evidence.

The fact that I am instructing you on the major of damages does not mean that I am of the opinion the Plaintiff is entitled to recover damages in this case. I express no opinion on that subject one way or the other.

My instructions are given to guide you in arriving at the amount of damages in the event you should, from a preponderance of the evidence, find that the Plaintiff is entitled to recover damages.

Court's Instructions

In your determination of the issues in this case you should give no consideration whatsoever to the fact that the parties are a corporation or to the

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fact that one or more of them may be relatively speaking, a large corporation. A corporation, whether it is large or small, rich or poor, is entitled to the same justice and consideration that this jury would give a natural person.

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call expert witnesses, witnesses who, by their education and experience, have become expert in some art, science, profession or calling, who are allowed to give an opinion as to a relevant or material matter about which they profess to be an expert and they may also state the reasons for their opinion.

You, the jury, consider each expert opinion received in evidence in this case and give it such weight as you think it deserves.

If you should decide that the opinion of an expert is not based upon sufficient education or experience or, if you should conclude that the reasons given by the expert in support of its opinion are not sound, you may reject it in its entirety.

During the course of the trial I occasionally have asked questions of a witness in order to bring

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out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions relate. Remember, at all times, that you as jurors are at liberty to disregard all factual comments of the Court in arriving at your own findings as to the facts.

It is sometimes my duty to admonish an attorney who, out of a zeal for his cause, does something which is not in

Court's Instructions

keeping with the rules of evidence or procedure. You are not to draw any inference either for or against the side to whom an admonition may have been made by me during the trial of this case. It is the duty of the attorneys on each side of the case to object when the other side offers testimony or other evidence which they believe is not properly admissible.

When the Court has sustained an objection to a question the jury is to disregard the question and to draw no inference from the wording of it or to speculate as to what a witness might have stated if the Court would have permitted him to answer.

Upon allowing the testimony of other evidence to be introduced over the objection of Counsel, the Court does not, unless expressly stated, indicate any

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opinion as to the weight of that evidence or the effect of that evidence.

As stated before, you are the sole judges of the credibility of all the witnesses and the weights and the effect of their evidence. The verdict must represent the considered judgment of each of you.

In order to return a verdict it is necessary that each juror agree thereto. In other words, your verdict must be unanimous. It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to your individual judgment.

Each of you must decide the case for yourself, but you do so only after an impartial consideration of the evidence and the opinions of your fellow jurors. In the course of your deliberations do not hesitate to reexamine your own views or change your opinion if you become convinced it was erroneous, but do not surrender your own honest con-

victions as to the weight or the effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of reaching a verdict.

You are not partisans; you are judges—

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judges of the fact. Your sole interest is to ascertain the truth from the evidence in this case.

As a matter of convenience to you in reaching your unanimous verdict I have prepared two forms of verdict. You will use one or the other of these two forms. The first one reads:

"We, the jury, find for the Plaintiff on the issue of damage and award the sum of blank dollars",

signed by whomever you select as your foreman, and date it.

The second one reads:

"We, the jury, find for the Defendant, the issue of damages and make no award to the Plaintiff."

That has a space to be signed by the foreman, if used, and dated. Whenever you have used one of these forms in arriving at your verdict and you are unanimously agreed and instruct your foreman to sign the form selected by you, you will then notify the marshal that you have concluded your deliberations and that you are ready to return to the courtroom with your verdict.

Now, gentlemen, I assume you have objections

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to these instructions and the Court, without prejudice to that right, will allow the jury now to retire to its deliberations.

Now, Mrs. Atkins and Mr. Dowery, as alternates you will stand aside. Does everyone of the jury feel well?

(Several jurors nod heads affirmatively at this point.)

By the Court: All right; the alternates may now stand aside and the jury will retire to its deliberations.

(Whereupon at about the hour of 3:32 P.M. the jury was removed from the courtroom by the marshal and the following proceedings occurred:)

By the Court: All right, gentlemen, if you would like to come with the Reporter we can dictate those objections on the instructions in chambers.

(Whereupon an adjournment was taken to chambers of the Court and the following proceedings occurred:)

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By the Court: All right; who wants to go first?

Mr. Anderson: The Plaintiff objects to that portion of the Court's instructions which advised the jury on the mitigation of damages, on the grounds that, in this type of case, under the evidence it is the Plaintiff's position that there was no possible way that any mitigation of damages, uh, could have occurred other than that which the plaintiff did. I think that is the only one we have.

By the Court: All right.

Mr. Reutlinger: Defendants, by Counsel, make the following observations and objections to the instructions as given to the jury by the Court.

First, the Court submitted to the jury instructions which would permit them to return a verdict both on the lost profits and on the land differential question by way of the foreclosure suit based on the thirty-two lots that were incorporated in this action in the amended complaint which we feel was untimely brought and without the period of limitations.

This is covering ground earlier covered in the record. Defendants, however, make the point at this

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time because of the testimony given by Mr. Fortner during

the course of the trial which seemed to not only emphasize the difference, but strengthen the position earlier taken on the limitation question.

Secondly, the Defendants object to the jury's instruction which permits them to award damages based on the difference between the appraised value of the property sold and the foreclosure and the actual sale value.

This is a two-fold objection; first, the only witness testifying on the subject, Mr. Nash, if worthy of belief, and he must be since he was the only witness, indicates that there was no damage from this source when the stipulation regarding the report of sale is considered which, of course, gives the values at which the property was sold in three groups.

We also still are of the opinion that this is a duplication of damages when the jury is permitted to award lost profits based on the sale of the, or, prospective sale of these same properties.

Three, the Defendants object to so much of the instructions that would permit the awarding of damages for loss of profits in excess of $127,670, and I digress here to point out that I hope my figure

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is correct which would appear to be the projected figure given by the witness, Cooper, and the highest of any rational projection made as to potential profits. All other evidence, when construed with existing evidence in the record, either comes up to a lesser figure or is purely speculative and has no substance.

Fourth, the Defendants, by Counsel, object to the format and nature of the instructions which will permit the jury to award damages for the full two hundred nineteen lots in the projected transaction. At the outset, Plaintiff accepted the loan and the arrangement by which it was obligated to purchase the homes.

There is no evidence whatsoever that at that time it neither did not want or did not need the homes. Instead, the record shows that it did not—it was not until June 5, 1962 that the Plaintiff finally determined that it did not want the home packages.

At that time, the witness Cooper has testified there were fifty-nine homes completed and sold; fifty-four on which he made a projection and five models.

Therefore, the permitting of an award by these instructions of damages of anything in excess of one hundred sixty lots, leaving aside for a moment the plea

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of limitations on the additional thirty-two lots, does not seem warranted.

Finally, and the sixth objection would be that the instruction to the jury where after correctly given an instruction on mitigation of damage, the Court points out as a matter of law that Mr. Fortner personally or his affiliated corporations had no duty to contribute additional capital.

In the abstract, I feel certain that this instruction is a correct statement of the law yet it is extraneous to the issues.

There was no issue raised, no pleading, no proof of anything in the record even remotely tending to show that Mr. Fortner or his affiliated corporations had a legal duty to do that nor was such argument contemplated, or if contemplated and made, should have been objected to, the point here being that this modification of the otherwise correct general instruction on the mitigations seems to go outside of the record to the prejudice of the Defendants.

By the Court: All right; let the objections on both sides be overruled.

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Jury Verdict

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By the Court: All right, Mr. Foreman; have you reached a verdict?

Mr. Hubrich: No, Your Honor, we haven't; we have to come back tomorrow.

By the Court: All right; if you will, turn your verdict forms over to the clerk and ladies and gentlemen, remember the admonitions of the Court and be back in the morning at 9:30. You are now free to go and if any of the ladies have got some problem about getting home check with the marshal and he will take care of you. All right, gentlemen.

(Whereupon at about the hour of 9:03 P.M. an adjournment was taken, to reconvene on Tuesday, June 30, 1970.)

Tuesday, June 30, 1970.

(Reconvened, pursuant to adjournment, at about the hour of 9:30 A.M. and the jury was removed from the courtroom by the Marshal to resume deliberations.)

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(Reconvened in open court at about the hour of 11:44 A.M. and the following proceedings occurred:)

By the Court: Ladies and gentlemen of the jury; have you reached a verdict?

Foreman Hubrich: We have, Your Honor.

By the Court: Would you pass it up to the clerk and she will read it?

(Thereupon the jury foreman did as requested.)

The Court Clerk: (Reading) "We, the jury, find for the Plaintiff on the issue of damages and award the sum of $93,200, dated June 30, 1970, signed Leroy J. Hubrich, Foreman."

Jury Verdict

By the Court: So say you all, ladies and gentlemen?

(Jurors nod heads affirmatively.)

By the Court: Do you desire a poll of the jury?

Mr. Reutlinger: No, waive the poll.

Mr. Anderson: Waive the poll,

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Your Honor.

By the Court: All right then; ladies and gentlemen, you are free to go until the fifteenth day of July at 9:30 in the morning and I want to express my appreciation to you for your patience and your attention during the trial of this very difficult case and you are to be commended for the quality of your service.

(Whereupon at about the hour of 11:47 A.M., an adjournment was taken.)

PLAINTIFF'S EXHIBIT 1-A

UNITED STATES STEEL HOMES
UNTED STATES STEEL CORPORATION
Division of USS
STANDARD CONDITIONS OF SALE

1. Definitions: As used herein, the words "Company Products" mean parts for such Homes as Company may from time to time make available to Dealers; the word "Dealer" means an Authorized Dealer for Company Products; and the word "Company" means United States Steel Homes Division, United States Steel Corporation.

2. Method of Payment: (Payments shall be made at par in legal tender of the United States of America. Dealer shall make such arrangements for payment as Company shall from time to time require, and Company may suspend production, shipment, or delivery until such arrangements are made.)

A. Truck Shipment
   (1) $100.00 Deposit—with Dealer Purchase Order.
   (2) Balance Due—to be paid by Dealer with Certified or Cashier's Check; must be received by Company Treasury Department at least three (3) days prior to Loading Date, or Company will remove from Shipping Schedule.
   (3) Shipping Charges—Payable by Dealer upon arrival of shipment.

B. Railroad Freight Collect (to Stations having Agent)
   (1) $100.00 Deposit—with Dealer Purchase Order.
   (2) Balance Due—to be paid by Dealer, upon arrival of shipment, against bill of lading and sight draft.
   (3) Shipping Charges—to be paid by Dealer upon arrival of shipment.

Plaintiff's Exhibit 1-A

C. Railroad Freight Added (to Stations having no Agent)
   (1) $100.00 Deposit—with Dealer Purchase Order.
   (2) Balance Due—to be paid by Dealer with Certified or Cashier's Check; must be received by Company Treasury Department at least three (3) days prior to Loading Date, or Company will remove from Shipping Schedule.
   (3) Shipping Charges—Company prepays freight and invoices Dealer following shipment.

D. Interim Financing Plan

E. Letter of Credit (in form acceptable to Company Treasurer).

3. Numbering Dealer Purchase Orders: The Dealer Purchase Order Number in the upper right corner of Page One of the Dealer Purchase Order should be filled in by Dealer. Any additional items not covered on this Dealer Purchase Order which the Dealer may subsequently require for the completion of this Home, shall be ordered on the Miscellaneous Purchase Order which shall make reference to the Registration Information assigned to the Home.

4. Position On Shipping Schedule: Company will establish the Actual Shipping Date as nearly as possible to meet the Arrival Date requested by Dealer. Dealer's position on the Company's Shipping Schedule will be governed by the date the Order is received at the Plant (subject to paragraphs 2 and 5).

5. Orders: Company agrees to give careful consideration to each Order. Acceptance of an Order by Company shall take place when an Authorized Company Representative's Signature appears on Page 2 of the Order. However, Company shall in no way be liable for failure to accept the

Order; or, if Order is accepted, Company shall not be liable for failure to ship Company Products as and when desired and ordered by Dealer, or for delay in shipments, however caused, or for shipping over other than routes specified by Dealer, or for shipment into the territory of Dealer on Order of any other Dealer.

6. Non-Cancellation: An Order, when accepted in writing by Company, shall not be cancelled by Dealer except as expressly provided elsewhere herein. In the event that within three (3) days before Actual Shipping Date Company loads any or all Company Products covered by the Order in reliance on Dealer's promise to pay any balance due before Actual Shipping Date, or in reliance on such Actual Shipping Date, and Dealer fails to pay such balance due or instructs Company to change Shipping Date, Company has the right to reimburse itself out of any deposit or payment made by Dealer to Company for costs of unloading or damages, and Dealer also agrees to reimburse Company for any such costs in excess of such deposit or payment. Any deposit or payment made to Company with the Order shall be considered as paid to Company as liquidated damages in the event Dealer does not accept delivery of the Company Products ordered within sixty (60) days of the date of acceptance thereof, or within any extension of such time made in writing by Company.

7. Cancellation: Dealer may cancel the Order and obtain refund of any deposit or payment made to Company thereon in the event of death or bankruptcy of a bona fide purchaser who has executed a Dealer's Sales Order for the Company Products covered hereby which has been accepted by Dealer, or in the event such purchaser is declared mentally incompetent, provided such death, bankruptcy or declaration of incompetency is subsequent to acceptance

of the Order by Company and prior to shipment of the Company Products so ordered.

8. Mode of Shipment: Company has the right to ship all Company Products covered by the Order by whatever mode of transportation and from whatever point it may select.

9. Shipping Charges: Dealer will pay all shipping charges on Company Products shipped to Dealer.

10. Demurrage: Dealer shall be responsible for and shall pay any and all charges for demurrage or storage, and all charges accruing after arrival of shipment at destination.

11. Diversions: If diversion is made upon Dealer's request or as a result of Dealer's failure or refusal, for any reason, to accept Company Products which may be shipped to Dealer hereunder, Dealer will be responsible for and will pay the additional charges and expenses, including shipping charges, incident to such diversion. If any such diversion results in return of shipment to Company, it shall operate as a cancellation of this Order in so far as it relates to the Company Products covered by the shipment. Any deposit or payment made by Dealer to Company may be applied by Company in reimbursement of its costs arising from any diversion, and Dealer agrees to pay any excess.

12. Loss Or Damage To Shipments: All claims for loss of or damage to shipments of Company Products shipped hereunder, while in the possession of the transportation agency, shall be made by Dealer.

13. Price: Dealer shall pay Company, upon each and every shipment of Company Products, Dealer's price from Company according to the terms and provisions of the Company's price list in effect at the time of the shipment of the Order by Company. All prices of Company Products

to Dealer shall be F.O.B. Company's plant from which shipment is made.

14. Change In Price: Company has the right, at any time, without notice, to issue new price lists and to change the prices and terms and conditions therein contained with respect to Company Products.

15. Dealer's Election: If Company issues a new price list, the prices, terms and provisions therein shall apply to all Company Products ordered by Dealer if at the time of such issue the Order has not been shipped by Company. Company will mail written notice to Dealer of any change affecting prices before shipping Orders for any Company Product to which such change is applicable. Dealer may cancel Orders for Company Products to which such change applies and obtain refund of any deposit or payment made to Company thereon, provided written notice of election to cancel is delivered to Campany within seven (7) days after mailing to Dealer of Company's notice. Failure so to cancel shall constitute an acceptance of the revised prices and authority to Company to ship and deliver Company Products covered by such Orders at such revised prices.

16. Payment Of Disputed Items: If any item is in dispute, payment therefor shall be made in full by Dealer under protest and a refund will be made by Company if a determination is made in favor of the Dealer. Receipt from Dealer or Dealer's bank of any check, draft or other commercial paper shall not constitute payment until Company has received cash in the full amount thereof. Dealer agrees not to attach, impound, enjoin or otherwise restrict any payments made by him or any other person acting in his behalf or on his order. Payment by Dealer in advance of shipments is subject to adjustment.

17. Warranty Information: There is set forth below the undertaking extended by the Company to the Dealer, which the Dealer in turn may elect, on his own behalf and not on behalf of the Company, to extend to the Owner of the U. S. Steel Home the parts for which are covered by his Order.

Warranty

Company warrants to Dealer that the panels and structural parts of U. S. Steel Homes manufactured or supplied by Company are free from defects in material and workmanship under normal use, service and maintenance.

Company agrees to make good at Company's Plant, or at Company's option to repair in place, parts determined by Company to be defective in material or workmanship under normal use, service and maintenance. This warranty shall not apply if, in Company's judgment, a panel or structural part has been repaired, refinished or altered so as to affect its stability or appearance; or if it has been subjected to misuse, negligence, accident or inadequate maintenance; or if, in Company's judgment, conditions were maintained in the Home which resulted in excessive condensation.

This warranty does not apply to furnaces, water heater, or other items of special equipment purchased by the Company; it is customary for the manufacturers thereof to warrant their own products.

Any part returned to Company for examination under this warranty must be shipped prepaid to Company in accordance with Company's written instructions. Replacements shall be f.o.b. shipping point, and Company shall not be liable for shipping or installation costs.

This warranty expires one (1) year from the date shown on the Registration Plate affixed to the Home.

Where there is any difference between said date and the date shown on Company's records, the latter shall govern.

Company reserves the right to revise, alter or revoke this warranty at any time with respect to panels or structural parts manufactured or supplied by Company after giving notice to Dealer.

This warranty is in lieu of all other expressed or implied warranties and all other liability by Company, and Company neither assumes, nor authorizes any person to assume for it, any other liability arising from the sale of Company's products. Company shall not be liable for any consequential damages whatsoever.

18. Return Goods And Allowances: No Company Product shall be returned by Dealer to Company without the prior written consent of the Company. Dealer shall pay all packing charges and prepay all shipping charges. On Company Products (other than defective) returned for credit, allowance shall be credited to Dealer's account based upon Company's determination of the condition and value of such Company Products at the time of receipt of same by Company.

19. Title: Title to all Company Products, except where the invoice shows sale to be on credit, shall be and remain with Company until actual receipt of the full purchase price in cash by Company and delivery of the shipment to Dealer. Until Company has received cash in full payment of any check, draft or other commercial paper; its right to retake and resell Company Products for which such paper is issued shall continue.

20. Taxes: Dealer will pay any taxes imposed by any law of the United States, or municipality, or other taxing authority upon the use or sale of Company Products shipped hereunder, or upon the ownership thereof after title has passed to Dealer.

21. Other Conditions of Sales: All sales are subject to such additional conditions as Company may from time to time adopt and transmit to Dealers, and all such additional conditions shall be deemed to be incorporated herein.

22. Change Of Products: Company reserves the right to make changes or omissions in unshipped Homes without notice and without obligation to make such changes or omissions on Homes already shipped, and thus does not guarantee that each Home shipped will, in each and every particular, conform to catalogs, advertising, literature, plans, drawings and descriptions of materials that may be in circulation at any time. Specific details, dimensions, or other information set forth in catalogs, advertising, literature, plans, drawing and descriptions of materials supplied by the Company have been obtained as the result of research or from sources believed to be reliable, but Company assumes no responsibility in Dealer's use thereof.

PLAINTIFF'S EXHIBIT 1-M

FINANCE COMMITTEE MEETING, JANUARY 12, 1954

"A program setting forth the desirability of providing FINANCING IN CONNECTION WITH THE ERECTION AND SALE BY DEALER-BUILDERS OF HOMES PRODUCED BY UNITED STATES STEEL HOMES, INC.

was presented.

After discussion, on motion and by the affirmative vote of all present, the organization of a subsidiary of this Corporation with an authorized capital of $5,000,000 and initial paid in capital of not to exceed $2,000,000, for the purpose of providing construction and mortgage financing to dealer-builders representing United States Steel Homes, Inc., was authorized, with the understanding that such

corporation would be operated on a sound competitive financial basis entirely independent of United States Steel Homes, Inc., and it would intend to procure firm commitments from mortgage investors to purchase approved mortgages on homes to be erected by such dealer-builders, it being intended that such corporation would not hold mortgages as an investment.

Thereupon, on motion and by the affirmative vote of all present, the following resolutions were adopted:

Resolved: That this Corporation has no objection to the use of the name U. S. Steel Homes Credit Corporation or any similar name upon the organization of such other corporation in the State of Delaware or its qualification in any other State, such name or similar name not being so similar to the name of this Corporation as to be calculated to deceive.

Further Resolved: That the officers of this Corporation be, and they hereby are, authorized and directed to make and execute, under the corporate seal of this Corporation, such certificates or consents as may be required and to file the same in the proper State offices."

FAIRLESS MILLS PENNSYLVANIA HOUSING PROJECT

It appears highly desirable that proposal contemplating completion and sale to outsiders of 279 houses under existing programs and construction and sale of 2,000 additional houses on FHA approved plan basis be adopted. It is proposed to implement the program in such a manner as to save time by dovetailing each part of the program into the next part thus avoiding stops and starts, thereby minimizing overhead and other costs, take full advantage of the early spring home buying and at the same time not to become extended beyond the approved sections of the

program. It is expected to accomplish this objective in the following manner:

1. Based upon VA guaranteed and/or conventional mortgage financing by usual mortgage investors, institute immediately a sales program to sell 165 houses to outsiders. Concurrently, develop complete program to order, erect and sell the remaining 114 houses of the 1953-1,000 house program.
2. When sales program to dispose of 165 houses appears to be successful, release order to United States Steel Homes, Inc. for 114 houses and promptly proceed to erect and sell them as in 1 above.
3. Concurrently with progress of 1 and 2 above, develop specific plans for site clearance, grading, installation of sewer and water lines, streets, curbs, sidewalks and erection of model houses, etc. for first 500 house plan and secure prior approval thereof by FHA so that this program can be quickly placed into operation as and when the sale of the 114 houses appears to be successful.
4. After erection of model houses, buyers' orders will be taken and accumulated into the most efficient number for erection at one time. Total number of houses in process of erection will not exceed 100 at any one time.
5. Site clearance and erection and sale of the remaining 1500 houses will be patterned after 3 and 4 above after securing prior FHA approval.
6. If the formation of the finance corporation is approved, the financing of the 165 and 114 homes as well as for the prospective 2,000 additional homes to be constructed as above can be financed through the finance corporation.

7. Depending upon satisfactory sale of the 165 and 144 homes and the satisfactory program on the sale of the first 500 houses of the 2,000 house program, proceed with construction of Building "C", Bowling Alley and Filling Station of the Shopping Center. Meanwhile, complete all plans for the Shopping Center additions at an early date so as to be prepared to proceed promptly as the opportunities are presented.

PROGRAM FOR FINANCING CONSTRUCTION AND SALES BY DEALER-BUILDERS OF U. S. STEEL HOMES, INC.

United States Steel Homes, Inc. states that ample consumer demand exists for new, modern houses in the low and moderate price brackets, provided sales are on terms within the financial means of the low and middle-income groups. It asserts that the prime concern of builders, including its own dealer-builders, lies in the development of outlets for FHA-insured and VA-guaranteed home mortgages bearing the most liberal loan-security ratios and terms allowable by law, and the procurement of construction financing against "take-out" commitments for the purchase of such mortgage.

United States Steel Homes, Inc. also states that to the extent that a prefabricated housing producer may assist its dealer-builders in developing such outlets and procuring such financing, its own potential for expansion is enhanced and that failure to provide financing restricts the market since dealer-builders will usually seek out that prefabricated house manufacturer who is prepared to provide a satisfactory form of financing. The trend in the prefabricated industry has been for the manufacturer, directly or through an affiliate, to provide construction money to the dealer-builders against investor mortgage commitments and to originate mortgages for resale to the investors.

We have been informed that the financing corporation operated by the principal prefabricated competitor, by assessing allowable fees and charges, has in addition to realizing substantial profits, also stimulated sales of the prefabricated homes.

Recommendation:

To meet the competitive demands, it is proposed to form a wholly owned subsidiary, to be known as United States Steel Homes Finance Corporation, for the purpose of providing, through its facilities, construction and mortgage financing for the dealer-builders representing United States Steel Homes, Inc.

1. The above purpose can be accomplished by:
   (a) Making an initial capital investment of $1 to $2 million to be paid in as required. (Authorized capital of $5 million).
   (b) Procuring firm commitments from mortgage investors to purchase approved FHA and VA mortgages on homes to be erected by dealer-builders of United States Steel Homes, Inc. Thus, the finance corporation operates essentially as a mortgage broker.
   (c) Lending capital funds and borrowed money (estimated loanable fund $12 to $16 million on $2 million capital) to dealer-builders of United States Steel Homes at the allowable fees and interest charges as construction money can be used in the construction and sale of United States Steel Homes.
   (d) Borrowing funds through the sale of commercial paper or short term revolving bank loans. (Anticipate the normal borrowing relationships would be 6 to 8 times paid-in capital.)

2. The advantages of forming a subsidiary finance corporation are:

(a) Make United States Steel Homes, Inc. dealers competitive.

(b) United States Steel Homes, Inc. states that sale of homes to their dealer-builders will be substantially stimulated. It is understood, however, that the finance corporation will be used to render financial service requested by dealer-builders and will not be used as a means to force sales to dealer-builders.

(c) To provide a source of construction financing and house mortgage procurement for the additional 2,000 house program at Fairless Mills, provided that this program is carried.

(d) To provide intangible marketing assistance to United States Steel Homes, Inc. through information relating to regional housing conditions, product improvement, Government policies, marketing programs, which data would be obtained through business contracts with dealer-builders, mortgage investors, Government housing agencies, home building associations and others.

(e) As a corollary result of providing requested financial service to dealer-builders of United States Steel Homes, Inc., it is anticipated that a satisfactory profit will be earned by Finance Corporation on the capital invested therein.

Note:

Under FHA approved projects, FHA provides thorough inspection service during period of construction. United States Steel Homes, Inc. has been providing inspection service as a check on performance of their dealer-builders.

This inspection has been applied to the major portion of erected Gunnison Homes. It is contemplated that these inspectors will be transferred to the finance corporation to provide protection to both the product and mortgages thereon. This service will be performed on similar basis as followed by insurance companies.

1/12/54

PLAINTIFF'S EXHIBIT 1-P

FINANCE COMMITTEE, MARCH 23, 1954

"There were presented

RECOMMENDATIONS FOR PENSION AND INSURANCE BENEFITS FOR CERTAIN EMPLOYEES OF U. S. STEEL HOMES CREDIT CORPORATION

as set forth in schedules submitted.

Thereupon, on motion and by the affirmative vote of all present, the following resolutions were adopted:

Resolved: That the group of employees of U. S. Steel Homes Credit Corporation named in the schedule submitted to this meeting be, and hereby it is, determined and designated as covered by the Plan for Employee Pension Benefits (Revision of 1950) and the specific benefits provided thereunder as specified in said schedule, and further

Resolved: That the groups of employees of U. S. Steel Homes Credit Corporation named in the schedule submitted to this meeting be, and hereby they are, determined and designated as covered by the Plan for Employee Insurance Benefits (Revision of 1950) and the specific benefits provided thereunder as specified in said schedule."

PLAINTIFF'S EXHIBIT 1-Q

FINANCE COMMITTEE MEETING, JANUARY 25, 1955

"There was outlined a proposal for a

LOAN OF UP TO $2,000,000 BY U. S. STEEL HOMES CREDIT CORPORATION TO AMERICAN COMMUNITY BUILDERS, INC.,

or one of its subsidiaries, secured by first lien on certain property in Park Forest, Illinois, and by a guarantee of American Community Builders, Inc.

After discussion, on motion and by the affirmative vote of all present, this proposal was recommended."

PLAINTIFF'S EXHIBIT 1-R

FINANCE COMMITTEE MEETING, JANUARY 15, 1955

"The Chairman referred to the matter of

FINANCIAL OPERATIONS OF U. S. STEEL HOMES CREDIT CORPORATION

and stated that the Corporation had heretofore subscribed to 10,000 shares of the capital stock of the Credit Corporation of the par value of $100 each for which it had paid $1,000,000. The Chairman outlined the requirements of the Credit Corporation for additional funds with which to conduct its operations.

After discussion, on motion and by the affirmative vote of all present, the following resolutions were adopted:

Resolved: That the officers of this Corporation be, and they hereby are, authorized on behalf of this Corporation to purchase at par value of $100 per share, upon request by the Credit Corporation, up to 10,000 additional shares of the capital stock of U. S. Steel Homes Credit Corporation.

Resolved: That the officers of this Corporation be, and they hereby are, authorized on behalf of this Corpora-

tion to make advances to U. S. Steel Homes Credit Corporation in amounts not to exceed a total of $2,000,000, such advances to be covered by promissory notes of like tenor to the promissory notes of other subsidiaries, and this Corporation agrees that the indebtedness covered by said notes shall be subordinate to loans to said U. S. Steel Homes Credit Corporation made by any bank prior to the revocation of this resolution."

PLAINTIFF'S EXHIBIT 1-S

FINANCE COMMITTEE MEETING, FEBRUARY 23, 1955

"Reference was made to the proposal, recommended January 25, 1955, for a

LOAN OF UP TO $2,000,000 BY U. S. STEEL HOMES CREDIT CORPORATION TO AMERICAN COMMUNITY BUILDERS, INC.,

or one of its subsidiaries, secured by first lien on certain property in Park Forest, Illinois, and by a guarantee of American Community Builders, Inc. The Committee was advised that it has been proposed that the term of the loan be for a period of not to exceed 36 months.

On motion and by the affirmative vote of all present, the extending of this loan for a period of not to exceed 36 months was recommended."

PLAINTIFF'S EXHIBIT 1-T

FINANCE COMMITTEE MEETING, JANUARY 24, 1956

"There was a discussion of the

FINANCIAL OPERATIONS OF U. S. STEEL HOMES CREDIT CORPORATION,

including proposal of the Credit Corporation to acquire FHA and VA mortgages from dealers of United States Steel Homes, Inc. with or without the guarantee by United States Steel Homes, Inc. against loss on the sale of the mortgages so acquired up to a maximum of $33,000,000 and to hold such mortgages on a temporary basis pending opportunity to dispose of the same at the best available price. After discussion, on motion and by the affirmative vote of all present, the foregoing proposal of the Credit Corporation was recommended."

PLAINTIFF'S EXHIBIT 1-U

FINANCE COMMITTEE MEETING,
FEBRUARY 26, 1957

"The Chairman reported that the U. S. Steel Homes Credit Corporation proposed to continue in effect in 1957 its $33,000,000 revolving fund for mortgage purposes in connection with homes produced and sold by United States Steel Homes Division.

After discussion, on motion, duly seconded, it was unanimously

Resolved: That this Committee recommends the U. S. Steel Homes Credit Corporation continue in effect during 1957 its $33,000,000 revolving fund."

U. S. Steel Homes Credit Corporation Revolving Fund

PLAINTIFF'S EXHIBIT 1-V

FINANCE COMMITTEE MEETING,
SEPTEMBER 10, 1957

Report on U. S. Steel Homes Credit Corporation

"There was presented a report summarizing the financial transactions and results of U. S. Steel Homes Credit Corporation. In addition, the Credit Corporations' modified mortgage program consistent with the recently issued Government housing regulations was outlined."

PLAINTIFF'S EXHIBIT 1-W

FINANCE COMMITTEE MEETING,
DECEMBER 16, 1958

"There was presented a report summarizing the financial transactions and results of U. S. Steel Homes Credit Corporation.

There was also presented a report on the proposed operations in 1959 of United States Steel Homes Division of the Corporation and a proposed program of U. S. Steel Homes Credit Corporation whereby for the purposes of enabling the Homes Division (1) to attain a minimum distribution of 1,800 units in 1959, and such additional distribution as may be feasible, and (2) to enlist and maintain the support of and assistance of selected dealers in the development and testing of steel components, and when specially requested by the Homes Division.

Report on U. S. Steel Homes Credit Corporation

A. The Credit Corporation, in instances in which its present programs of loans, mortgage commitment issuance, and mortgage commitment procurement prove inadequate to effectuate the above purposes, would

extend the following financial assistance to dealers in addition to its present programs:

1. Make loans to or for the benefit of dealers or enter into other forms of transactions designed directly to effectuate the above purposes, without conformity with conventional or conservative patterns but within the bounds of prudent business judgment;

2. Issue commitments for the purchase of FHA-insured and VA-guaranteed mortgages at fixed discount expense, and hold and liquidate mortgages acquired thereunder as promptly as may be practicable with minimum loss, if any, consistent with the limitation of the $33,000,000 revolving fund;

provided,

B. That the Homes Division underwrite and guarantee all loss incurred in the liquidation of mortgages acquired under any commitments providing fixed discount expense, to the extent which such loss may exceed the loss which would have been incurred if the commitments had provided fixed discount expense corresponding with that fixed generally by institutional issuers of stand-by commitments, as determined by the Credit Corporation at the time of issuance of the commitment.

After discussion, on motion, duly seconded, it was unanimously

Resolved: That the proposed program of loans and commitments by U. S. Steel Homes Credit Corporation outlined in the preamble to this resolution be, and hereby it is, recommended.

Resolved: That acceptance by United States Steel Homes Division of United States Steel Corporation of the condition outlined in paragraph B in the foregoing preamble be, and hereby it is, authorized."

PLAINTIFF'S EXHIBIT 1-X

FINANCE COMMITTEE MEETING, AUGUST 25, 1959

"There was presented a report summarizing the financial transactions and results of U. S. Steel Homes Credit Corporation.

There was also presented a report on the effects of the 1959 financial program on the sale of homes by United States Steel Homes Division of the corporation and a proposal to continue the financing assistance program recommended for 1959 by the Finance Committee December 16, 1958, with the understanding that the special financing program may be called upon to support 1,600 sales for 1960 in an effort to assist United States Steel Homes Division in reaching a 2,500 units sales objective in 1960 or to support more sales if such objective is exceeded.

Report on U. S. Steel Home Credit Corporation

After discussion, on motion, duly seconded, it was unanimously

Resolved: That the continuance during 1960 of the program of loans and commitments by U. S. Steel Homes Credit Corporation referred to in the resolution of the Finance Committee of December 16, 1958, be, and hereby it is, recomended."

"There was presented a report summarizing the financial transactions and results of U. S. Steel Homes Credit Corporation.

There was also presented a report on the effects of the Credit Corporation's 1960 financial program on the sale of homes by United States Steel Homes Division of the Corporation as recommended by the Finance Committee August 25, 1959, and a proposal by the Credit Corporation that it continue to make land acquisition, land development

Plaintiff's Exhibit 1-X

and construction loans (including special loans of such types in keeping with prudent business judgment as differentiated from conventional or conservative financing patterns) and that it continue to issue commitments for the purchase of FHA-insured and VA-guaranteed mortgages at fixed discount expense and hold and liquidate mortgages acquired thereunder as promptly as may be practicable with minimum loss, if any, consistent with the limitation of the $33 million revolving fund established in 1956 to provide financing assistance to promote the sale of homes by United States Steel Homes Division, any loss incurred in the liquidation of mortgages acquired under any commitments providing fixed discount expense to be an expense of the Homes Division, and with the understanding that the special financing program may be called upon to support sales for 1961 in an effort to assist United States Steel Homes Division in reaching a 3,000 units or $10 million sales objective in 1961 or to support more sales if such objective is exceeded.

Report on U. S. Steel Homes Credit Corporation

After discussion, on motion, duly seconded, it was unanimously

Resolved: That the continuance during 1961 of the program of loans and commitments by U. S. Steel Homes Credit Corporation, as proposed by it at this meeting, be, and hereby it is, recommended."

PLAINTIFF'S EXHIBIT 1-Y

FINANCE COMMITTEE MEETING, MARCH 14, 1961

Report on U. S. Steel Homes Credit Corporation

"There was presented a report summarizing the financial transactions and results of U. S. Steel Homes Credit Corporation. The Chairman reported that inasmuch as the

Plaintiff's Exhibit 1-Y

U. S. Steel Homes Credit Corporation is essentially limiting its mortgage purchase commitments to those of a 'standby' nature and adhering to its general policy of not holding mortgages as an investment, it had rescinded its previously established provision for acquisition and holding of FHA and VA mortgages up to a maximum of $33,000,000. He further reported the Credit Corporation had increased its bank borrowing maximum from $20,000,000 to $24,000,000 and advised the Committee that in the event of increased bank borrowings for the conduct of its business the Credit Corporation would call upon this Corporation to advance it an additional $1,000,000 covered by promissory note subordinate to bank loans to the Credit Corporation, which additional advance is authorized by Finance Committee resolution of February 15, 1955.

After discussion, on motion, duly seconded, it was unanimously

Resolved: That the action of U. S. Steel Homes Credit Corporation as reported in the preamble to this resolution be, and hereby it is, endorsed."

PLAINTIFF'S EXHIBIT 1-Z

FINANCE COMMITTEE MEETING, JULY 25, 1961

"The Chairman reported a proposal of U. S. Steel Homes Credit Corporation to increase its authorized capital stock from 50,000 shares of the par value of $100 each to 100,000 shares of the par value of $100 each.

Increase Capital Stock of U. S. Steel Homes Credit Corporation.

After discussion, on motion, duly seconded, it was unanimously

Resolved: That the proposal of U. S. Steel Homes Credit Corporation to increase the amount of its authorized

capital stock from $5,000,000, consisting of 50,000 shares of the par value of $100 each, to $10,000,000, consisting of 100,000 shares of the par value of $100 each, be, and hereby it is recommended.

The Chairman presented for consideration the matters of the purchase by this Corporation of all or part of an additional 90,000 shares of the capital stock of the U. S. Steel Homes Credit Corporation and of an advance to the Credit Corporation of not to exceed $30,000,000. He stated that in the event such purchase and loan are authorized an existing authorization of February 15, 1955 to purchase up to 10,000 shares of the capital stock of the Credit Corporation would be revoked, and that no further advances would be made to the Credit Corporation under authority of the same date.

Purchase Shares Capital Stock of U. S. Steel Homes Credit Corporation.

After discussion, on motion, duly seconded, it was unanimously

Resolved: That the purchase by this Corporation, at such time or times as is authorized by the Chairman of the Board, the President, the Chairman of the Finance Committee, the Treasurer, or the Comptroller, of all or part of 90,000 shares of the capital stock of U. S. Steel Homes Credit Corporation at par value of $100 per share, be, and hereby it is, recommended.

Advance to U. S. Steel Homes Credit Corporation.

Resolved: That the making by this Corporation of advances to U. S. Steel Homes Credit Corporation of up to $30,000,000, in the amount or amounts and at the time or times authorized by the Chairman of the Board, the President, the Chairman of the Finance Committee, the Treasurer, or the Comptroller, be, and hereby it is, recommended."

PLAINTIFF'S EXHIBIT 1-AA

DIRECTORS' MEETING, JULY 25TH, 1961

Consent to increase in authorized capital stock of U. S. Steel Homes Credit Corporation.

"The Chairman of the Finance Committee presented the Committee's recommendation with respect to (a) a proposal of U. S. Steel Homes Credit Corporation to increase its authorized capital stock, (b) the purchase by this Corporation of additional shares of the capital stock of the Credit Corporation and (c) an advance by this Corporation to the Credit Corporation.

After discussion, on motion, duly seconded, the following resolutions were unanimously adopted:

Resolved: That the Chairman of the Board of Directors, or the President, or the Chairman of the Finance Committee, or any Vice President of this Corporation, be, and hereby he is, authorized and directed to execute and deliver on behalf of this Corporation, under the corporate seal of the Corporation, attested by its Secretary or any Assistant Secretary, a written instrument consenting to the amendment of the Certificate of Incorporation of U. S. Steel Homes Credit Corporation to effect change in the authorized capital stock of the said Credit Corporation from Five Million Dollars ($5,000,000), consisting of Fifty Thousand (50,000) shares of Capital Stock of the par value of One Hundred Dollars ($100) each, all of the same class to Ten Million Dollars ($10,000,000), consisting of One Hundred Thousand (100,000) shares of Capital Stock of the par value of One Hundred Dollars ($100) each, all of the same class.

Purchase Shares Capital Stock of U. S. Steel Homes Credit Corporation

Resolved: That the purchase by this Corporation, at such time or times as is authorized by the Chairman of

the Board, the President, the Chairman of the Finance Committee, the Treasurer, or the Comptroller, of all or part of 90,000 shares of the capital stock of U. S. Steel Homes Credit Corporation at par value of $100 per share, be, and hereby it is, authorized.

Advance to U. S. Steel Homes Credit Corporation

Resolved: That the making by this Corporation of advances to U. S. Steel Homes Credit Corporation of up to $30,000,000, in the amount or amounts and at the time or times authorized by the Chairman of the Board, the President, the Chairman of the Finance Committee, the Treasurer, or the Comptroller, be, and hereby it is, authorized.

Revocation of Resolutions re U. S. Steel Homes Credit Corporation Transactions

Resolved: That resolution of the Finance Committee of February 15th, 1955 authorizing the purchase at par value of $100 per share of up to 10,000 shares of the capital stock of U. S. Steel Homes Credit Corporation be, and hereby it is, revoked.

Resolved: That the authority granted by resolution of the Finance Committee of February 15th, 1955 to make advances to U. S. Steel Homes Credit Corporation be, and hereby it is, revoked."

PLAINTIFF'S EXHIBIT 2-B

FINANCIAL STATEMENTS
DECEMBER 31, 1962
Price Waterhouse & Co.

[Letterhead of PRICE WATERHOUSE & CO.]

To the Board of Directors
U. S. Steel Homes Credit Corporation

In our opinion, the accompanying financial statements present fairly the financial position of U. S. Steel Homes Credit Corporation at December 31, 1962 and the results of its operations for the year, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Our examination of these statements was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

/s/ Price Waterhouse & Co.

Plaintiff's Exhibit 2-B

U. S. STEEL HOMES CREDIT CORPORATION
(a wholly owned subsidiary of
United States Steel Corporation)

BALANCE SHEET

ASSETS

	December 31, 1962	December 31, 1961
Cash	$ 349,662	$ 373,374
Construction loans to builders, secured by mortgages	4,883,205	3,669,305
Land development and financing loans, secured by mortgages	7,082,092	5,917,748
Advances on mortgages on homes under construction		167,966
Warehouse Agreements loans	2,504,448	4,042,126
Individual Home mortgages	93,272	92,511
Other loans		167,175
Federal National Mortgage Association stock	5,007	5,007
	14,568,024	14,061,838
Less—Reserves	299,264	299,264
	14,268,760	13,762,574
Interest and other receivables	297,172	279,459
	$14,915,593	$14,415,407

Plaintiff's Exhibit 2-B

U. S. STEEL HOMES CREDIT CORPORATION
(a wholly owned subsidiary of
United States Steel Corporation)

BALANCE SHEET

LIABILITIES AND NET WORTH

	December 31, 1962	December 31, 1961
Demand notes payable to banks	$ 9,190,000	$12,000,000
Note payable to United States Steel Corporation (subordinated to bank loans)	4,000,000	1,000,000
Accrued interest and other payables	255,512	131,909
Accrued taxes	121,159	54,995
	13,566,671	13,186,904
Capital Stock and accumulated income:		
Capital stock:		
Authorized—100,000 shares of $100 par value		
Issued and outstanding—10,000 shares	1,000,000	1,000,000
Accumulated income, per attached statement	348,922	288,503
	1,348,922	1,228,503
	$14,915,593	$14,415,407

NOTES TO FINANCIAL STATEMENTS

At December 31, 1962 the corporation had commitments to purchase mortgages or to make additional loans up to approximately $31,000,000.

The corporation's parent company has agreed that upon request, it will purchase an additional 90,000 shares of the corporation's capital stock at par and lend the corporation an additional $26,000,000, such loans to be subordinated to bank loans.

Plaintiff's Exhibit 2-B

U. S. STEEL HOMES CREDIT CORPORATION
(a wholly owned subsidiary of
United States Steel Corporation)

STATEMENT OF INCOME AND ACCUMULATED INCOME

	December 31,	
	1962	1961
Income:		
Interest	$744,761	$862,426
Loan fees	112,338	109,850
	857,099	972,276
Expenses:		
Interest on loans payable	544,004	621,200
General and administrative expenses	75,031	69,403
Provision for bad debts		171,000
Provision for federal income taxes	117,645	51,620
	736,680	913,223
Net profit for the year	120,419	59,053
Accumulated income at beginning of year	228,503	169,450
Accumulated income at end of year	$348,922	$228,503

[Letterhead of
U. S. STEEL HOMES CREDIT CORPORATION]

April 23, 1964

I hereby certify that the attached documents contain true and correct copies of minutes included in the minutes of the Executive Committee and Board of Directors of U. S. Steel Homes Credit Corporation and that the copies of the Certificate of Incorporation and Amendment thereto and of the By-Laws of U. S. Steel Homes Credit Corporation are true and correct copies of said documents.

/s/ B. L. Rawlins,
Secretary

PLAINTIFF'S EXHIBIT 4

May 3, 1962

H. R. Black, Vice President—Sales
Stanley J. Mack, Manager—Dealer Sales
A. B. Fortner Meeting—Complaints

As you know, I along with Paul Grayson, met with Mr. A. B. Fortner and his organization last Thursday, April 26, for the purpose of determining the reasons for his dissatisfaction and what we could do to improve relations with this dealer. We had information that Fortner was very much dissatisfied, to the extent that he was considering the possibility of discontinuing his program with United States Steel Homes.

In my discussions with Mr. Fortner, he left no doubt that there was considerable dissatisfaction, and that the possibility of discontinuing his program was not remote. His position was that, through a long list of product problems and deficiencies, his costs had increased considerably, and that his sales group had lost confidence in the product they were selling. He felt that he had priced his product extremely competitively, based on the assumption that he would get a quality product, easy to erect and, therefore, with few problems. He stated that the results were the opposite—it had been one series of "minor" problems from the start, each of which, while only a few dollars in itself, continued to pile costs on top of costs to the point where his profit margin was almost nil. Along with this, he stated he had difficulties getting clearance on buyers. The combination of product problems, loss of confidence by his sales group and difficulties in getting buyer approval made it impossible for him to carry on the volume program he had originally anticipated. Volume is his big need to maintain the prices he has established. He stated that, while we have been prompt, in most cases, in shipping

replacement materials or correcting mistakes, still and all this was not the answer.

The following are a list of current complaints which he gave to me:

1. Screens: Some screens are too thick for the channel in the window and, as a result, they bend. He must remove screens and search for a screen of proper thickness and then re-install the screen. Result is extra time and cost.

2. Storm Doors: The stop strip for the storm door is being split because the screws that fasten the strip to the jamb are too short. Also, on the front door the striker plate is frequently set back too far, resulting in the latch chewing up the trim.

He further advised that the chains which we place on the wood storm doors do not qualify for the F.H.A. requirement of a chain check on such doors. Apparently, the F.H.A. inspector interprets the "check" to be an automatic closing device rather than a chain.

3. Windows: He advised that the rails do not line up on many windows and, as a result, it is impossible to lock them. Along with this complaint, there is wind and water leakage.

4. Cabinets: He mentioned several instances of where cabinet doors were slightly out of alignment, screws were missing from door handles and, in a few instances, shades did not match. While not big items, these were aggravating. More aggravating was the fact that F.H.A. requires polishable metal over ½" asbestos board for a cabinet when it is within 28" of a range top. This was called to their attention during their F.H.A. inspection on two recent models. Upon checking with the plant, they were advised that we did not furnish this fire protective board and, apparently, could not tell where these might be obtained. More aggravating, we did not show any interest in obtaining these for them. They did find the asbestos board at Kitchen Mart, but felt that we should have made the effort to furnish the item.

5. Gable Ends: On a recent F.H.A. inspection on two models, both were turned down because of waviness of gable ends along with other infractions. While, again, we have redesigned the gable and to eliminate this problem, they are fearful of repercussions on other existing homes. They state, too, that the use of batten strips would increase their costs.

6. Exterior Panels: They complained that, in several instances, exterior panels did not align properly which, in turn, resulted in a more difficult tape and spackle job. You are already aware of the problems we have had concerning dry-wall with this dealership. We have taken the position that their dry-wall installer is at fault which, of course, did not improve their dispositions.

7. Soffits: They stated that the method we use of ventilating in the soffit meets heavy buyer objection. The ventilating screen is very obvious in this position and looks cheap to the buyer. You can see the truss, roof sheathing and it does not give the appearance of a quality house. Their salesmen have complained a great deal about this as an objectionable item on our homes. They would like gable louvers.

8. Nail Pops: They advised that they had had instances of nail pops and, in particular, those occurring in the Cummings house. F.H.A. has demanded that they make certain corrections on this houme and, at the present time, they have a time extension for replying to F.H.A.

9. Closet Doors: You are well aware of the problems we have had concerning closet door installation at Fortner's.

Fortner was quite frank in stating that some of the problems are of their own making—that they are not

entirely blameless. Nevertheless, many of the items which he has listed are our fault and they all add up to the fact that here is a most disgruntled dealer and we are in serious danger of losing him. We can and have taken the position on several occasions that his workmanship is inferior, which may be true, but this will not solve our problem.

I advised Mr. Fortner that we have corrected many of the complaints that he mentioned—for example, the new post-formed top for curing the problem of counter tops. We have re-designed the gable ends. We are re-designing closet doors. We are investigating the possibility of easing the edges of the gypsum to avoid the tape and spackle problem. We are considering going to a 6′8″ closet door and even offered him the option of deleting closet doors, to which he replied that he wanted a complete package. I asked Mr. Fortner to prepare an estimate on the additional expenses he incurred as a result of our deficiencies and let us take a look at these. I did not indicate that we would accept any amount or settle for any amount. Rather, I asked for specifics and specific amounts so that we could make an honest appraisal. He advised me that he would do this but it would take a little while.

The most important item in our conversation was the fact that he has become convinced that his salvation lies in a $10,000 house and he is going to have this whether it is with us or with someone else. He indicated a willingness to "let bygones be bygones" if we could furnish such a product, even if it involved special pricing in the home package from us. I told Mr. Fortner that we must follow a one-price policy and, therefore, there can be no price concessions, even though this might be a method of "making up for past mistakes".

As you know, Paul has been working on this price house with Fortner's organization and, at that time, felt that the

lowest attainable price was 10,500. I expressed doubt that we can ever get another $500 out of the home package alone. Since this time, Paul has learned that the house which Fortner's competition (Swindler) had been offering at $10,000 was low-cost 221 and, with this possibility, we may be able to get closer to the $10,000 figure.

In summing up, there is no question that this dealership is quite dissatisfied and we face the possibility of losing him. We can take the position that much of his troubles he brought on himself by his construction methods, yet I cannot help but feel that we are at least partially responsible. We should attempt to make an equitable settlement on extra costs incurred as as result of our mistakes. I will not know the figure we are talking about until he presents his specific figures. We must eliminate the causes for complaint, since in their present frame of mind every little item looms large now. Paul Grayson should know within the next week whether or not we can develop a home plan or package which will permit Fortner to build in the price range he indicated.

I intend to follow up with Mr. Fortner within the next week concerning these complaints, and have promised him to do whatever I can to correct the problems which I have outlined. I further stated that if we cannot improve or correct these items, I would be honest and frank about it and advise him of this, without any false promises.

/s/ Stanley J. Mack
Manager—Dealer Sales

PLAINTIFF'S EXHIBIT C-5

MEMORANDUM

June 26, 1961

To: Mr. R. C. Dyas
From: Mr. W. L. Rollins
Subject: Fortner Enterprises, Inc.
Louisville, Kentucky

The captioned dealer was franchised on October 31, 1960, and presently has under development with U. S. Steel houses and with financing provided by the Credit Corporation, Golden Meadows Subdivision, Louisville, Kentucky. Status of Outstanding Loan:

	Authorized	Disbursed	Repaid	Outstanding	Maturity
Land Note # 1.....	$ 88,000	$ 84,566	$ 6,600	$ 77,966	12-31-61
Land Note #2.....	231,920	133,718	—	133,718	12-31-62
Construction Note #1...	373,200	123,537	24,612	98,925	12-31-61
Construction Note #2...	1,362,180	—	—	—	12-31-62

The existing loan was made against 187 lots located in Golden Meadows Subdivision, of which number 30 were fully developed and 157 unimproved. Of the Land Notes aggregating $319,920, the amount of $170,500 was disbursed at loan closing to enable Mr. Fortner to buy out the other principal in Iroquois Developers, Inc., which at that time held title to the 187 lots in question and which company, following consummation of the stock purchase, transferred title to the property to our borrower, Fortner Enterprises, Inc.

Borrower reports in excess of 35 sales applicable to lots covered by the loan of which number evidence of 23 approved sales have been furnished to the Credit Corporation. In order to assure liquidation of Land Note # 1 by maturity Borrower will have to erect and close approximately 35 houses by December 31, 1961.

Plaintiff's Exhibit C-5

Request:

Under date of 5-29-61 the subject dealer submitted another financing request to the Homes Division to cover 32 fully developed lots situated in Golden Meadows Subdivision, which lots are presently owned by Iroquois Developers, Inc. At the time of the negotiation and closing of our present loan the 32 lots in question had been contracted for sale by Iroquois to Apex Homes, Inc., for $68,000.00, payable within one year from the date of the contract, March 17, 1960. However, prior to actual consummation of the sale Mr. Herman Miles, president of Apex Homes, Inc., became general superintendent of Fortner Enterprises, Inc., and consequently permitted the contract to expire.

Mr. Fortner has requested a land loan of $54,000 against the 32 improved lots, together with construction financing. Of the $54,000 land portion of the requested loan, approximately $24,000 would be utilized to retire an existing mortgage on the property, with the balance of $30,000 being requested by Fortner to replenish a portion of the working capital claimed to have been expended in connection with the programming and operation of the U. S. Steel subdivision and which has become frozen due to various delays incurred in placing the program in operation.

The aforementioned request was being processed through the Homes Division under the "special" financing program, however, prior to the formal submission thereof to the Credit Corportion, Mr. Boyd, President of the Homes Division, addressed a letter to you dated June 13, 1961, reading as follows:

> "Under date of June 5 Harry Black forwarded to me, with copy for Bill Rollins, a memorandum concerning Fortner Enterprises, Inc.
>
> "It was the intention of the Sales Department to consider the contents of that memorandum as a request

for special financing. In a sense it is, but I believe it relates largely to the existing financing situation with this dealer, and it may well be that a discussion with Mr. Fortner prior to processing any formalized request in this case would be in order.

"Indications thus far are that Mr. Fortner has done a better than satisfactory job of introducing United States Steel Homes, product in his Louisville subdivision. It is apparent that he has spent considerable time, effort and money in promotional activity, but he does not yet have sufficient houses built and closed to provide for abnormal turnover of money to meet the costs which he has thus far incurred.

"I would appreciate it if you would review the problem with him."

In compliance therewith I met with Mr. Fortner on June 20, 1961, in an effort to determine if there was a more conservative basis upon which we could provide financing on the lots in question and still be of assistance to him. Mr. Fortner's position was that he needed the financing as requested and felt that a loan similar to that which we originally made was justified.

Should a loan be provided as requested the same would be in the total amount of $462,400.00 as follows:

Total Estimated Valuation—$17,000 per lot—		
32 lots		$544,000.00
Total Maximum Loan—85% of valuation		$462,400.00
Land Note:		
Retire existing mortgage	$24,000	
Working Capital to Borrow	29,688	
Loan Fee	2,312	$ 56,000.00
Construction Note		406,400.00
Total Maximum Loan		$462,400.00

On a per lot basis the loan proceeds would be allocated:

Maximum Estimated Valuation	Maximum Loan (85%)	Allocated to Land Note	Allocated to Construction Note
$17,000	$14,450	$1,750	$12,700

Collateral:

A first lien would be offered as security on 32 fully developed building lots. The lots in question are presently carried on the books of Iroquois Developers, Inc., at approximately $41,500 which apparently represents cost.

Estimated FHA lot valuation is at $2,200 per lot or a total valuation of $70,000.

The land portion of the requested loan amounting to $54,000 would result in a loan approximating 130% of lost and 77% of FHA improved lot valuation.

The proposed release value of $2,200 per lot would result in liquidation of the requested loan on closing of 25 lots, or approximately 78% of the total lots involved.

Construction funds would be disbursed on a stage basis on pre-sold houses.

Financial Condition:

Attached is unaudited balance sheet of Fortner Enterprises, Inc., as of May 31, 1961.

It will be noted that the statement was prepared by showing only as value of work in process those items of costs which had actually been paid and not including in this asset item any costs covering work which had been completed but which was covered by outstanding payables. I subsequently contacted Mr. Fortner's outside accounting firm and have been advised that as of May 31, 1961, payables due suppliers and subcontractors amounted to $27,845.45 (of which $9,457.60 have now been paid) and that $11,641.23 had been billed by United States Steel Homes Division for house packages.

Plaintiff's Exhibit C-5

It is evident that until such time as the subject might realize profits from closing in volume any further working capital must either be provided by Mr. Fortner from additional injection or from the proceeds of the requested loan.

Comments:

The improved lots which are the subject of this request are situated in the middle of the initial section of Golden Meadows Subdivision and are surrounded by existing houses which seem to be well maintained. Mr. Fortner reports several sales are available to him on said lots and he is presently in process of erecting 4 of our houses thereon aided by local financing.

In viewing the subdivision, particularly that portion covered by our existing loan, the dealer has practically completed development of the small section of 17 lots (Section 1-F) which was the initial development phase provided for under our loan so as to test the market, and is making rapid progress with the development work in the adjacent section (Section 1-D) comprising 96 lots.

It appears that he has done a very good job with his models and his sales pricing seems to be below that offered by competitiors. This should furnish reasonable assurance of capturing a better than fair share of the available market with the presently unknown factor being, of course, the ability to maintain adequate volume to absorb overhead costs and realize a profit.

As previously indicated herein Mr. Fortner stated that he needed the amount requested over and above that required to retire the existing mortgage to replenish working capital which had been depleted to date due to various delays. In this connection, in our discussion I informed Mr. Fortner that expenditures of this nature are normally borne by all builders and in many instances represents about the only risk capital a builder provides.

Plaintiff's Exhibit C-5

I further informed him that I felt that a construction loan on the lots in question with provision for disbursement of sufficient funds to retire the existing mortgage could probably be made but that it was difficult to justify a loan such as he was requesting in view of the substantial "front money" exposure we had incurred in our existing loan. Mr. Fortner took the position that he was entitled to the same consideration on this request as he received on the original loan.

In my opinion the expenditures heretofore made for promotional activities, model furniture, overhead, etc., represents about the only capital injection made in connection with our existing loan and another 100% loan to enable a recapture of a part of such expenditures is not justified.

However, should it be determined to authorize such a loan, the following terms and conditions are suggested:

1. Evidence of Indebtedness:
   a. Land Note in the principal amount of $56,000, maturing in one year, and bearing interest at the rate of 6% per annum, payable monthly, with provision being made for release of lien of the Land Note upon receipt of payment of $2,200 per lot.
   b. Construction Note in the principal amount of $406,400, maturing in one year and bearing interest at the rate of 6% per annum, payable at house closings.
2. Collateral:
   First lien on 32 fully developed building lots situated in Golden Meadows Subdivision.
3. Disbursements:
   a. Proceeds of Land Note to be disbursed at time of loan closing in payment of Loan Fee, retirement of existing mortgage, and balance to Borrower for working capital purposes.

Plaintiff's Exhibit C-5

b. Proceeds of Construction Note to be advanced in stage disbursements as work progresses on pre-sold houses.

4. Other terms and conditions to be substantially in accordance with standard requirements imposed by the Credit Corporation in loans for land acquisition and construction financing.

BALANCE SHEET
FORTNER ENTERPRISES, INC. (A Kentucky Corporation)
May 31, 1961
ASSETS

CURRENT ASSETS			
Cash in bank		$ 6,271.95	
Account receivable		235.55	
Inventory—Golden Meadows Subdivision:			
(1) Land costs (151 lots)	$240,500.00		
(1) Land development costs and other costs allocable to land.	12,742.30		
(1) Work in process—Model Homes and houses under construction	101,853.93		
Furnishing and decorating—Model Homes	11,970.45	367,066.68	
Deferred expenses:			
Interest—Payment on Land Notes No. 1, and No. 2, Golden Meadows Subdivision	$ 5,723.30		
Promotion and advertising costs—Golden Meadows Subdivision	3,221.65		
Other deferred expenses	498.14	9,443.09	
Total Current Assets			$383,017.28

Plaintiff's Exhibit C-5

INVESTMENTS			
Land and dwellings (Three rental units			
Net depreciated cost	$ 29,376.01		
Less: first mortgage notes payable	29,220.46	$ 155.55	
Federal National Mortgage Association Stock		734.00	889.55
TOTAL ASSETS			$383,906.83

NOTES: Work in process shown above includes only costs actually paid toward cost of construction of houses at balance-sheet date. Any costs due subcontractors, supervisors, etc. at balance-sheet date are not reflected herein either as an inventory item or account payable.

The above balance-sheet has been prepared from the books and records of Fortner Enterprises, Inc. and is presented without audit or verification.

LIABILITIES AND CAPITAL

CURRENT LIABILITIES			
First mortgage notes payable:			
(1) U. S. Steel Homes Credit Corporation—Land Note No. 1	$ 73,600.00		
(1) U. S. Steel Homes Credit Corporation—Land Note No. 2	107,175.00		
(1) U. S. Steel Homes Credit Corporation—Construction Note No. 1	106,820.82	$287,595.82	
Loans payable:			
A. B. Fortner, Jr.	$ 25,000.00		
Iroquois Developers, Inc.	23,000.00	48,000.00	
Accrued expenses			44.70
TOTAL CURRENT LIABILITIES			$335,640.52

Plaintiff's Exhibit C-5

CAPITAL

Preferred stock outstanding	$ 6,000.00	
Common stock outstanding	1,000.00	
TOTAL	7,000.00	
Appreciation surplus	$ 62,000.00	
Deficiency in earned surplus	20,733.60	41,266.31
		48,266.31
TOTAL LIABILITIES AND CAPITAL		$383,906.83

(1) First mortgage notes are secured by land and improvements in accordance with Loan Agreement and Mortgage Deed dated October 28, 1960, between Fortner Enterprises, Inc., and U. S. Steel Homes Credit Corporation.

NOTE: Appreciation surplus shown above resulted from revaluation of 186 subdivision lots acquired by the Company.

PLAINTIFF'S EXHIBIT C-6

May 29, 1961

Mr. Harry R. Black
N. G. Day
Financing Request—Fortner Enterprises, Inc.

Dealer and Borrower:

The subject dealer, operating in Louisville, Kentucky, is a recently franchised dealer who is presently working with the Credit Corporation under a land development and construction loan agreement. Models and a sales program were opened in March, and to date the dealer reports over 40 firm sales, with several buyers having been approved and others in process. Production houses are now being shipped.

The dealer recently re-acquired an additional group of lots in Golden Meadows Subdivision and has six of our homes sold in this area even though no effort has been made in that direction.

Plaintiff's Exhibit C-5

Paul Grayson and I met with the dealer on May 19, to discuss requirement on this group of lots.

Project:

The lots are located within Golden Meadows Subdivision a short distance from Fortner's existing program. They are fully developed, FHA approved and ready for use.

When the original loan for development and construction was made and closed, these lots were not available and were no longer owned by Iroquois Developers, Inc. or Fortner Enterprises, Inc. They had been sold, on a contract, to Apex Homes, Inc., Herman Miles, President. At that time, it was Mr. Miles' intent to build conventional homes on these lots. Since that time, Mr. Miles has become general superintendent of Fortner Enterprises, Inc., United States Steel Homes project, and did not wish to build homes on his own in competition with Fortner, so on March 17, this year, the contract expired and the lots reverted to Iroquois Developers, Inc. It is now Mr. Fortner's desire to obtain full control of the lots in the name of Fortner Enterprises, Inc. and to build United States Steel Homes on the balance.

A mortgage of approximately $29,000 is held on these lots by a subsidiary of Louisville Mortgage Service. They have made a commitment to release 4 lots and make construction loans on four of the six homes that are sold which will reduce the mortgage to approximately $24,000.

Financing:

In our meeting with Mr. Fortner, he stated that due to serious delays in getting his United States Steel Homes program started, and further delays in starting the sold houses, because of extremely wet weather all spring, and due to the fact that they had gone over their budget for advertising, furnishings, promotional materials, etc., by a considerable amount, he is in somewhat of a bind for capital.

Plaintiff's Exhibit C-6

There were originally 36 lots in the subject group, 34 of which were sold to Apex and 2 to another builder, all of which are now available. Four of these being financed for construction of our homes, leaving 32 to be picked up.

Mr. Fortner's request is as follows:

Balance of mortgage on 32 lots.....	$24,000
Additional capital required.....	30,000
Total.....	$54,000

The FHA valuation on the lots in averaging $2,200 and Mr. Fortner suggested this as a release value which is the same as the previous, existing agreement. This would pay off the loan in 24 plus lot releases.

These lots are ready for use. Six sales have been made, 2 of which will apply to the requested loan. This program would give us a very definite added commercial advantage in this market.

I, therefore, recommend approval of this request and respectfully urge your usual expeditious handling and further recommendations to the Credit Corporation.

/s/ N. G. Day

NGD/df

Enclosure: Copy of contract between Iroquois and Apex

PLAINTIFF'S EXHIBIT C-7

June 5, 1961

Mr. David H. Boyd, President
Harry R. Black, Vice President—Sales
Financing Request—Fortner Enterprises, Inc.

The attached request for Fortner Enterprises, Inc. should allow us to achieve additional shipments into the Louisville area during this construction season. Mr. Day's report is complete and provides adequate information for our consideration. The loan request is actually to pay off a mortgage on the improved lots and to acquire additional working capital as needed by the Fortner operation.

As I have informed you in the past, Fortner Enterprises expended large amounts of money in advertising and promoting the project. As a matter of fact, they did one of the outstanding promotional jobs that I have seen in the past year. The market in the Louisville area has responded well to their promotion; and although delays were encountered due to bad weather, the program is now rolling, and we have accomplished in excess of 40 sales to date.

The loan on the improved lots as presented will not only assist him in this capital requirement, but should provide additional immediate funds because of the improved condition of the lots.

It is the recommendation of the Sales Department that the Credit Corporation meet with the principals of Fortner Enterprises, Inc. and negotiate this request.

HRB/df
Attachment
Distribution: D. H. Boyd (3)
W. L. Rollins
S. J. Mack
Andrew Cowart
N. G. Day

PLAINTIFF'S EXHIBIT C-8

UNITED STATES STEEL HOMES

Division
United States (USS) Steel Corporation
New Albany, Indiana

Copy of Letter June 13, 1961

Mr. R. C. Dyas
Vice President and General Manager
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Dear Dick:

Under date of June 5 Harry Black forwarded to me, with copy for Bill Rollins, a memorandum concerning Fortner Enterprises, Inc.

It was the intention of the Sales Department to consider the contents of that memorandum as a request for special financing. In a sense it is, but I believe it relates largely to the existing financing situation with this dealer, and it may well be that a discussion with Mr. Fortner prior to processing any formalized request in this case would be in order.

Indications thus far are that Mr. Fortner has done a better than satisfactory job of introducing United States Steel Homes' product in his Louisville subdivision. It is apparent that he has spent considerable time, effort and money in promotional activity, but he does not yet have sufficient houses built and closed to provide for a normal turnover of money to meet the costs which he has thus far incurred.

Plaintiff's Exhibit C-8

I would appreciate it if you would review the problem with him.

Yours very truly

/s/ DHB
President

Copy to New Albany Office
CC: H. R. Black

PLAINTIFF'S EXHIBIT C-9

[UNITED STATES STEEL HOMES LETTERHEAD]

June 29, 1961

Mr. W. H. Lang, President and Treasurer
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Fortner Enterprises, Inc.

Dear Mr. Lang:

Under date of June 5, I received in this office the attached recommendation from Harry R. Black, Vice President—Sales, covering an additional financing request under the special program for the subject dealer.

Since I recognized, after a review of the recommendation, that the request was in effect an extension of, and directly related to, the existing program which this dealer is now following, I suggested to R. C. Dyas that a preliminary discussion be held with the dealer pending the processing of any formal action. This discussion was held on June 20 by W. L. Rollins, and a copy of Mr. Rollins' report was sent to this office.

Subsequent to its receipt, I have discussed the subject more fully with Harry Black, and despite the liberal nature of the request and proposal, it is his judgment that this ad-

ditional financing provides an important commercial benefit to us in the Louisville area. He has indicated to me that the dealer is earning a profit on the sale of the product, and has further stated that the dealer has in excess of thirty-five sales ahead. Assuming that these can be closed this year, they should be sufficient to permit the dealer to liquidate his 1961 indebtedness on schedule.

Control will continue to be exercised over the dealer's operations in order to prevent the possibility of speculative building.

Our Treasury Department indicates that dealings thus far have been satisfactory.

Consequently, it is recommended that consideration be given to further negotiations with Mr. Fortner so that a continuing program may be provided.

Your very truly,

D. H. Boyd,
President

Enc.
CC: R. C. Dyas
H. R. Black
W. L. Lieber

PLAINTIFF'S EXHIBIT C-10

Mr. R. C. Dyas, Vice President — June 26, 1961
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Dear Mr. Dyas:

Re: Fortner Enterprises, Inc.
Proposed Additional Loan

Reference is made to Mr. Boyd's letter addressed to you under date of June 13, 1961, relative to the request

submitted by the subject dealership for financing on approximately thirty-two additional lots in the Golden Meadows Subdivision, in which letter it was requested that the Credit Corporation review with Mr. Fortner his problem prior to any formalized processing of the case.

On June 20, 1961, accompanied by Mr. Grayson of the Homes Division and Mr. Leonard of the Credit Corporation, I met with Mr. Fortner on this matter and attached is a memorandum regarding his request.

There can be no question that the dealer has incurred substantial expenditures of which he has been unable to recover any portion to date. After discussing the matter with Mr. Fortner I can only conclude that a loan on any basis other than that which he has asked for would be unacceptable to him.

I am forwarding copies of this letter and enclosure to Mr. Boyd and Mr. Black so that they will be in a position to discuss the case with you.

Very truly yours

WLR/df
Encl.
CC: Mr. D. H. Boyd
Mr. H. R. Black

W. L. Rollins
Assistant General Manager

PLAINTIFF'S EXHIBIT C-11

Copy to New Albany Office
CC: H. R. Black — 6/16/61
W. H. Lang

This is the letter I mentioned to you.

Dave's theory seems to be that this simply represents a need by a dealer for general working capital to carry out his existing program, and, therefore, does not represent a request under the special program.

R. C. Dyas

PLAINTIFF'S EXHIBIT C-12

UNITED STATES STEEL HOMES

Division
United States (USS) Steel Corporation
New Albany, Indiana

David H. Boyd, President

June 13, 1961

Mr. R. C. Dyas
Vice President and General Manager
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Dear Dick:

Under date of June 5 Harry Black forwarded to me, with copy for Bill Rollins, a memorandum concerning Fortner Enterprises, Inc.

It was the intention of the Sales Department to consider the contents of that memorandum as a request for special financing. In a sense it is, but I believe it relates largely to the existing financing situation with this dealer, and it may well be that a discussion with Mr. Fortner prior to processing any formalized request in this case would be in order.

Indications thus far are that Mr. Fortner has done a better than satisfactory job of introducing United States Steel Homes' product in his Louisville subdivision. It is apparent that he has spent considerable time, effort and money in promotional activity, but he does not yet have sufficient houses built and closed to provide for a normal turnover of money to meet the costs which he has thus far incurred.

Plaintiff's Exhibit C-12

I would appreciate it if you would review the problem with him.

Yours very truly,
/s/ DHB
President

PLAINTIFF'S EXHIBIT C-13

R C D

1. A loan which is made, should be adequate to do the job.
2. A customer deserves our best cooperation. If he is a productive acc't & has a problem, how can we help solve it?
3. We avoid working capital loans as such be—
   a. Acct. must have some thing at risk.
   b. We are not in the business of just lending money—it must be associated directly with production of houses.
4. People's lack of comprehension of 2 programs & discussions about words are aggravating, but can't be a reason for action or inaction. If it is put up the wrong way get it right but our customer should not suffer.

PLAINTIFF'S EXHIBIT C-16

If we all *create* and *understand* some principles we are *seldom* in this situation—this is not *new* but a part of any group wanting to make a joint accomplishment. Such understanding must come from close working together and not these formal exchanges. I don't like the type of loan the dealers attitude, etc., etc., but I also don't like the time it has taken, the back and forth inter-Co. Conversation and after all that, a dismissal of the case when Homes & Credit are miles apart from any common understanding! How can this be explained!

PLAINTIFF'S EXHIBIT C-17

MEMORANDUM

July 6, 1961

To: W. H. Lang
From: R. C. Dyas
Subject: Fortner Enterprises, Inc.
Louisville, Kentucky

Chronology of this loan request as follows:

June 5. Rollins receives copies of a loan request dated May 29, memo dated May 29 from Day to Black, and memo dated June 5 from Black Boyd, endorsing request under special program. Copies of such memos are furnished Credit Corporation for advance information only. No action is taken until Boyd formally endorses for Homes Division.

June 9. Rollins and Dyas confer with Boyd and Black in Boyd's office (New Albany) and present objections to loan. Boyd and Black emphasize commercial importance and ask that we confer with Fortner to see if anything can be worked out.

June 13. Boyd forwards letter to Dyas which does not endorse request but reiterates desire for Credit Corporation to meet with Fortner and "review the problem with him." Rollins makes appointment to meet with Fortner on Saturday, June 17, which is earliest available for Fortner, and at Fortner's request this is subsequently postponed to June 20.

June 16. Dyas discusses with Lang, who counsels cooperative approach (see file).

June 20. Rollins meets with Fortner and develops information contained in his report of June 26. Preparation of report is delayed while Fortner prepares and furnishes balance sheet attached as exhibit.

Plaintiff's Exhibit C-17

June 28. Dyas receives Rollins' report and discusses same with Black who also has copy. Black says he will talk with Boyd and call back.

June 30. Dyas advised Lang on status.

July 5. Black calls Dyas and advises Homes Division endorses request. Meanwhile, letter from Boyd to Lang dated June 29, asking that "further negotiations" be conducted.

While a solid month has transpired since we first heard of this request, we have lost no time whatever in cooperating with Homes and the dealer, meanwhile handling the other work of the Credit Corporation. There can be no criticism by anyone on this score.

If the overall impression is one of inefficiency, this is readily admitted in behalf of all concerned. It is the same inefficiency which results from any group of two or more cooks brewing the same broth, or a football team without a quarterback. Sometimes there is a wide gap between the ideals of a town meeting and its accomplishments.

The lack of common understanding between Homes and Credit is easily explained. One is interest almost exclusively in shipments; the other in applying some semblance of business judgment in loan transactions which actually are not more than speculations on the promotional capabilities of opportunists called home builders.

How this common understanding can be improved without formal exchanges and informal conversations—both of which you say you dislike—is beyond my comprehension. There has been no lack of working together in this case. There is simply a difference of opinion, and somebody has to make a decision. Meanwhile, the dealer is waiting.

As I advised you the other day, I have discussed with Black the idea of joint meetings between Homes and Credit

Plaintiff's Exhibit C-17

in New Albany once a week or every two weeks if it will help to improve the common understanding of which you speak. It probably would result only in loading more of Homes' responsibilities on our shoulders, without reciprocal authority, but I am willing to try.

Amen.

PLAINTIFF'S EXHIBIT C-18

Re: Fortner Eterprises, Inc.
Louisville, Kentucky
Loan Status as of 4/30/62

Date of Loan	Loan No.	Loan Type	Original Amount	Rem. Commit.	Unpaid Balance	Maturity Date
10/28/60	1568	A & D (S)	$ 88,000	$ 00	$ 00	—
	1568	C(R)	373,200	78,631	28,980	6/ 1/62
	1568	A & D (S)	231,920	30,902	200,757	12/31/62
	1568	C(R)	1,362,180	1,235,436	105,784	12/31/62
8/ 2/61	1602	A(S)	59,000	00	52,400	12/31/62
	1602	C(R)	403,400	379,641	00	12/31/62
TOTALS			$2,517,700	$1,724,610	$387,921	

Security:

Loan No. 1568 originally was secured by first mortgage on 186 lots, with release values sufficient to retire the two land notes over 146 lots. Loan No. 1602 is secured by first mortgage on 32 lots, with release values sufficient to retire the land note over 25 lots.

Shipments:

67 shipments have been made. Release values paid to date have been sufficient to retire the $88,000 land note under Loan No. 1568.

R. C. Dyas
May 15, 1962

PLAINTIFF'S EXHIBIT C-19

May 11, 1962

W. H. Lang

Bill Rollins has just received a copy of this letter today. Thought you should be advised immediately. R. C. Dyas

Boyd—Discussed today— (illegible) to Bird writing (illegible) RCD will try to see if can't keep (illegible) basis instead of allowing written parts to become issues.

PLAINTIFF'S EXHIBIT C-20

Hamilton, Hopson & Hamilton
Attorneys at Law
Louisville, Kentucky

May 11, 1962

United States Steel Homes Division
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana

ATT: Mr. D. H. Boyd, President

Gentlemen:

On or about October 28, 1960, Fortner Enterprises, Inc., entered into a formal arrangement with the United States Steel Homes Credit Corporation whereby it was agreed that the United States Steel Homes Credit Corporation would extend credit to Fortner Enterprises under condition that Fortner Enterprises construct homes in Golden Meadow Subdivision out of component parts manufactured and furnished by the United States Steel Homes Division of United States Steel Corporation.

Since the inception of this contract Fortner Enterprises have in good faith constructed homes of these components in Golden Meadow Subdivision and expended large

sums of money in a diligent effort to bring about the sale of these units. However, it is very apparent that many of the components furnished by the United States Steel Homes Division are inferior and of sub-quality and no amount of care or promotion by Fortner Enterprises has been able to overcome these serious shortcomings.

Therefore, it is incumbent that arrangements be made to compensate Fortner Enterprises for the damage it has sustained in the past and can reasonably expect to sustain in the future due to these defective products which have in turn greatly damaged the reputation of Golden Meadow Subdivision.

Would you please have your representative contact this office no later than one week from the date of this letter in order that we may avoid the necessity of costly litigation.

Sincerely yours,

Hamilton, Hopson & Hamilton
A. Scott Hamilton, Jr.

cc: H. R. Black
W. R. Rollins

PLAINTIFF'S EXHIBIT C-21

MEMORANDUM

To: W. H. Lang — March 3, 1960
From: R. C. Dyas
Subject: Fortner Enterprises, Inc.
Louisville, Kentucky
Acquisition and Development, $310,000

I have discussed the subject application by telephone with Mr. Boyd, pointing out the possibility that the dealer's lack of experience in the use of our product might result

in a failure of this project and the eventual acquisition of the project real estate by the Credit Corporation.

Mr. Boyd expressed his willingness to assure the Credit Corporation that in the event the project real estate should be so acquired, the Homes Division would take immediate action to place the property into production, either through activity by the Construction Department or some other dealer in the area, or a combination of both.

Mr. Boyd understands that maturity of the loan must be sufficiently extended to provide for a two-year building program.

cc: D. H. Boyd

PLAINTIFF'S EXHIBIT C-25

UNITED STATES STEEL CORPORATION

Division
United States(USS) Steel Corporation

INTER-OFFICE MEMORANDUM

Date Sept. 12, 1960

To: Mr. Harry R. Black, General Manager—Sales
From: N. G. Day, Manager—Field Sales
Subject: Fortner Enterprises, Inc.—Special Financing

On December 22, 1959, I submitted a financing request to you on behalf of Fortner Enterprises, Inc., Louisville Kentucky, covering 186 lots in Golden Meadows Subdivision. At that time the land in question was owned by a corporation known as Iroquois Development, Inc. with ownership held equally between Mr. A. B. Fortner, Jr. and Mr. Willian RoBards. Mr. RoBards had agreed to sell his interest to Mr. Fortner and an agreement with the Credit Corporation was reached on that basis.

Plaintiff's Exhibit C-25

Models were selected, costs established and submissions were made to FHA for model homes for which satisfactory commitments were eventually received.

It appeared that the program was ready to go, then Mr. RoBards decided that it looked too good for him to relinquish his interest. This caused considerable delay and the agreement had to be extended and eventually allowed to expire.

Since they were at an impasse, Mr. Fortner decided to sell his interest to Mr. RoBards, subject to Mr. RoBards' ability to obtain the same financing arrangements from the Credit Corporation. As you know, our Treasury Department investigated and found that they could not recommend Mr. RoBards for financing.

Since that time I have met both principals and Mr. RoBards has now definitely agreed to sell his interest to Mr. Fortner and step out of the "deal" entirely.

Therefore, in a pursuant meeting with Mr. Fortner, he has stated that it is his desire to reinstate the original request and agreement, and if approved, proceed at once on construction of models and opening of a sales program.

You will recall that there are 31 lots completely developed and ready to use, with 155 to be developed. It is strongly felt that the 31 homes can be sold and shipped in 1960, with the 155 for a 1961 program. This will still give us our fastest entry into the Louisville market this year.

I have met and discussed this program with Mr. Fortner on several occasions and am convinced of his ability, enthusiasm and sincerity. He has the building organization, sales and promotion people, and financing know-how to make this program successful.

I respectfully request your earliest consideration of his request and your recommendations to the Credit Corporation.

/s/ Neil G. Day
Manager—Field Sales

NGD/df

PLAINTIFF'S EXHIBIT 31

U. S. STEEL'S YEAR—AT A GLANCE

		1961	1960
Income	Amount	$190.2 million	$304.2 million
	Return on sales	5.7 per cent	8.2 per cent
	Per common share	$ 3.05	$ 5.16
Dividends	Declared on preferred	$ 25.2 million	$ 25.2 million
	Declared on common	$162.3 million	$162.0 million
	Per common share	$ 3.00	$ 3.00
Taxes	Per common share	$ 4.82	$ 6.99
Production	Ingots and castings	25.2 million tons	27.3 million tons
	Per cent of 1957-59 average	92.1	99.5
Shipments	Steel products	16.8 million tons	18.7 million tons
Property Expenditures	Spent in year	$326.8 million	$492.4 million
	Authorized at year end	$300.0 million	$500.0 million
U. S. Gov't Securities Held		$300.0 million	$300.0 million
For Property Expenditures	At year end	$947.5 million	$608.1 million
Working Capital	At year end	$625.8 million	$454.4 million
Total Long-Term Debts	At year end	325,512	321,834
Stockholders	Common and preferred	199,243	225,081
Employes	Average number for year	$ 3.89	$ 3.68
	Average hourly earnings*	36.1	34.8
	Average weekly hours	$136.90	$127.81
	Average weekly earnings*		

*Excluding social security taxes, pensions, insurance and other employe benefit costs. (Total hourly employment costs shown below.)

Plaintiff's Exhibit 31

SALES, COSTS AND INCOME IN 1961

	Total Dollars in millions	Dollars per employe*	Dollars per man-hour*
Receipts from customers—the public	$3,336.5	$17,212	$9.40
Disposed of as follows:			
Employment costs†—U. S. Steel's direct employment.	1,622.7	8,371	4.57
Products and services bought—Provides employment by suppliers and by their suppliers in turn	1,022.4	5,275	2.88
Wear and exhaustion—Provides employment by suppliers of new plants and equipment and by their suppliers in turn	210.5	1,086	.59
Taxes—Provides revenue for governments	260.8	1,345	.74
Interest—Compensation for savings loaned	29.9	154	.08
Dividends—Compensation for savings invested	187.5	967	.53
Income reinvested in business	2.7	14	.01
TOTAL	$3,336.5	$17,212	$9.40

*Excluding employes (2.7 per cent of total) the cost of whose work was charged to construction.
†Including social security taxes, pensions, insurance and other employe benefit costs.

Plaintiff's Exhibit 31

A REVIEW OF THE YEAR BY THE CHAIRMAN

In U. S. Steel's affairs the trends during 1961 were in many respects the reverse of those that prevailed in 1960. In the earlier year U. S. Steel's business, in common with that of the country as a whole, was contracting; in 1961 that trend was reversed. Sales and income, however, were smaller in 1961 than in 1960. The general level of steel prices remained unchanged for the third successive year. Employment costs reflected the December 1960 increase as well as the effect—in the fourth quarter—of the increase made in October 1961, both of which were in accordance with the January 4, 1960, labor agreement. Thus profits were squeezed to the lowest level of recent years by the pressures of the lower demand for steel, increasing costs, and by strong competitive forces both at home and abroad.

PRODUCTION AND SHIPMENTS

Production and shipments were at their low points of the year during the first quarter, which marked the end of a decline that started in 1960. A significant improvement occurred during the second quarter as inventory reductions by customers slowed to a near halt. Despite the usual summer business lull and the effects of automobile model changeovers, steel demand was maintained during the third quarter. In the fourth quarter, steel production and shipments reached their highest level for the year as a result of rising business activity. Increased ordering by customers at year end would seem to portend both a higher consumption of steel and some inventory rebuilding by customers for the first half of 1962.

Production of steel ingots and castings during the year amounted to 25.2 million net tons, and represented 92.1

per cent of the 1957-1959 average production compared with 99.5 in 1960.

Shipments of steel products during 1961 were 16.8 million net tons compared with 18.7 million tons in 1960.

INCOME, SALES, DIVIDENDS, TAXES

Income for 1961 was $190.2 million or 5.7 per cent on sales on $3,336.5 million. This compares with income of $304.2 million or 8.2 per cent on sales of $3,698.5 million in 1960.

Dividends of $7.00 per share were declared for the year on the 7 per cent cumulative preferred stock. Dividends for the year on the common stock were $3.00 per share, consisting of four declarations of 75 cents each in April, July and October and in January 1962. Total dividends declared for 1961 on both classes of stock aggregated $187.5 million or 5.6 per cent of sales and 98.6 per cent of income. Income reinvested in the business was $2.7 million.

Estimated United States and foreign taxes on income together with state, local and miscellaneous taxes amounted to $260.8 million for 1961 as compared with $377.8 million for 1960.

PROPERTY EXPENDITURES

U. S. Steel's expenditures for additions to and replacements of facilities amounted to $326.8 million in 1961 compared with $492.4 million in 1960. Property expenditures authorized during the year amounted to $127 million compared with $297 million in 1960. On December 31, 1961, the amount required to complete all authorized projects was estimated at $300 million compared with $500 million at the close of the prior year. U. S. Government securities set aside to cover property expenditures authorized amounted to $300 million at December 31, 1961, unchanged from December 31, 1960.

The $326.8 million of property expenditures compares with recorded wear and exhaustion of $210.5 million for the year. This latter amount was inadequate to recover the buying power originally expended for facilities used up during the year. The resulting deficiency is primarily due to inflation in the cost of new facilities while depreciation under existing tax laws continues to be based on the original cost of facilities purchased many years ago. The need for revision of the tax laws as they relate to depreciation is more vital than ever if industry is to modernize its facilities and thus meet foreign competition and provide the new job and product-creating facilities so essential to the growth of the nation. The proposal by Administration officials for an eight per cent tax credit is a recognition that a problem exists in the depreciation area, but it falls far short of dealing with the fundamental facility replacement problem arising from inflation.

WORKING CAPITAL AND DEBT

Working capital at December 31, 1961, after deducting dividend declarations and the $300 million set aside for property expenditures, was $947.5 million compared with $608.1 million at December 31, 1960.

The total long-term debt outstanding at December 31, 1961, was $925.8 million compared with $454.4 million at December 31, 1960. Details of debt appear on page 35.

In April, $300 million of United States Steel Corporation 4½ per cent Sinking Fund Debentures, due April 15, 1986, were sold to a nation-wide group of underwriters for public distribution. The proceeds were added to the general funds of the Corporation to restore in part working capital expended in the continuing expansion and modernization program and to be used for corporate purposes including future expenditures for property additions and replacements.

The sinking fund requires payments sufficient to redeem $15 million principal amount annually in the years 1967-1985, at a sinking fund redemption price equal to the principal amount, and is calculated to retire 100 per cent of the issue by maturity. The Corporation may double sinking fund payments in any of these years. The debentures may be redeemed optionally at 104¼ per cent to and including April 14, 1963, and at decreasing prices thereafter until April 14, 1981, and thereafter at the principal amount; however, they are not redeemable prior to April 15, 1966, from borrowed moneys having an interest cost of less than 4.55 per cent per annum. Interest is payable semi-annually on April 15 and October 15. A registration statement filed with the Securities and Exchange Commission became effective April 18, 1961. The debentures are listed on the New York Stock Exchange.

In June, Quebec Cartier Mining Company, a subsidiary of U. S. Steel, borrowed $200 million from a group of American and Canadian banks in accordance with an arrangement made in 1959. Interest is payable quarterly at the rate of 4½ per cent per annum and repayment of principal will be made in installments with the first payment on January 1, 1963, and with the final payment on March 1, 1966. The proceeds were used to assist in the development of the project to mine iron ore in the Province of Quebec, Canada.

STEEL PRICES

Although U. S. Steel made a few price changes both upward and downward for certain individual products, the general level of its steel product prices in 1961 remained unchanged from that of the last half of 1958. This price level stability contrasted dramatically with the steady increase in hourly employment costs. Prices, of course,

are influenced by costs but are determined by the natural forces of the market place, including such factors as customer demand, competition with steel producers at home and abroad and competition with other materials.

In August, 1961, certain members of Congress recognized that hourly employment costs for steelworkers would be increased by contract in October and suggested several measures to prevent a price increase which they expected would follow the cost increase. On September 6, the President of the United States wrote to U. S. Steel, as well as to eleven other steel companies, requesting that each forego an increase in steel prices. U. S. Steel answered the President in detail, and a copy of the President's letter and this answer were transmitted to each stockholder and employe. That letter made clear, as has been done many times before, that costs are only one factor in prices. In 1961 the inexorable influences of the market place in our competitive free enterprise system continued to dictate the course of U. S. Steel's pricing actions.

STEELS AND PROGRESS

Steels are everywhere. People eat with them, live in them, work with them, play with them, and even wear them; they write with them, sleep on them and save lives with them; and they ride in them on the railroads and highways, over the sea, under the sea and into outer space. Steels are in needles and nose cones, in skyscrapers and salt shakers, in trucks and tin cans, and in motors and mail boxes. Steels are as functional as a safety pin, yet as beautiful as a jewel box. They can last for centuries yet be so inexpensive as to be thrown away after one using —as with tin cans.

Steels are a means as well as a result of progress. Their many and diverse uses, which have fostered the nation's

growth, result from continuing research into their composition, production techniques and distribution methods. New or improved steels are continuously being developed; so also are competing materials. The architect, designer, engineer and customer thus have an ever-widening range of materials from which to choose in seeking the multiple goals of optimum performance, minimum cost, and aesthetic appeal.

Knowledge of what steels are, how steels are made, the investment required in facilities, new and improved steels, and how markets for steels are being expanded is essential to understanding steels and how they are meeting the competitive challenge.

What Steels Are

Steels are not just a single product; they are thousands of individual products having different chemical compositions, sizes, shapes, surfaces, and internal physical structures. Their many unique combinations of properties are well suited to meet the intensifying competition of substitute materials. Strength in steels, for instance, is many things: strength at high temperatures, at low temperatures, or both; strength to withstand a constant load, many frequent shocks, or both; strength as in a solid bar, in a tube, or in a piece of wire.

Strength, however, is only one property that customers want in the steel they buy. The steel in a round bar for an automobile coil spring, for example, also needs great elasticity, toughness, and precise dimensional uniformity to provide maximum safety and riding comfort. For transmission gears, a different round bar is used—one which can be easily machined to shape and size and then, by controlled heating cooling, made tough and long wearing.

U. S. Steel provides steels in thousands of varieties of shapes and sizes in order to meet all of the different needs

of customers. This is illustrated by the available variety of just one product—round bars of carbon steel grades. These are available to customers in 342 different diameters, ranging from ⅜ inch to 9½ inches, and in 176 chemical compositions. In processing each of these sizes and compositions there is a further choice of 5 heat treatments, 5 surface treatments and 25 custom-made qualities to fit specific needs. Even more varieties of round bars are available in alloy steel grades.

Steels used in combination may also enhance the utility and economy of the final product. For example, scores of different steels in a multitude of sizes and shapes are efficiently used in an automobile to provide the best combination of properties at lowest cost; five different specifications of steel have been used in hundreds of shapes and sizes in the construction of a single bridge; and at least five different steels are used in various forms in the manufacture of the familiar portable outdoor barbecue grill.

Steels have many and diverse applications only because they can be made with a wide range of characteristics. Strength and hardness in steels, for example, can be varied by changing the amount of carbon combined with the iron, or the method and speed of cooling, or the extent to which steels are reduced in thickness by rolling. Toughness and weldability can be added to strength and hardness by replacing part of the carbon with alloying elements and by controlled heating and cooling.

How Steels Are Made

Before steels can be made, there must first be ore, coal and limestone mines; transportation equipment to assemble raw materials; and equipment to convert coal into coke. Related equipment also converts the chemicals liberated from the coal into salable products such as coal tar and

naphthalene for the plastics, pharmaceutical and other industries.

A blast furnace consumes large quantities of coke and limestone in converting iron ore into as much as 2,600 tons of molten iron per day. Many auxiliary blast furnace facilities are also necessary, including those to supply about two and one-half tons of air (about 65,000 cubic feet) at a temperature as high as 1,800 degrees F. for each ton of iron produced, equipment for supplying large amounts of water and fuels, equipment for cleaning waste gases to make them usable as fuels for such purposes as generating electricity, and equipment for salvaging materials which were formerly considered waste products. Some of these materials are used in high construction, for railroad ballast, and in the manufacture of cement.

Molten iron, steel scrap and other materials are converted into steel in another facility, most commonly an open hearth furnace. The most modern of these furnaces use large quantities of oxygen, and some can make as much as 1,500 tons of steel each day. Each steel must initially be produced to exacting specifications and then processed through one of many possible series of facilities to obtain the size, shape, surface and internal make-up which are necessary to satisfy the requirements of customers.

Production of any steel requires precise control of its chemical composition in the open hearth by regulating the quantity of the materials used as well as the sequence in which each is added. During the production cycle the chemical composition is adjusted by adding alloying materials, and temperature must be controlled within narrow limits.

The molten steel is first poured from the open hearth into large brick-lined ladles and then into molds where it solidifies into ingots. Production of a high quality steel

requires precise control of the temperature of the steel during pouring, the rate of pouring, the time interval before reheating the ingot for shaping, and the time and temperature during reheating.

If a steel is to be formed into round bars from which the customer makes automobile coil springs, the ingots will be about 24 inches square and 7 feet high. These ingots are first passed between a series of revolving rolls with successively smaller openings until the steel is only 2½ inches square. In this form, it is cut into predetermined lengths as long at 30 feet.

In the final processing stages, the 2½ inch squares are again heated to about 2,000 degrees F. and further carefully rolled into a perfectly round shape less than ¾ inch in diameter, cut to an exact length, tested, inspected and only then shipped to customers. This precise processing necessary to produce steel for automobile springs is but one example of the facilities, the great care and the skills required to produce today's tailor-made steels.

Investment In Facilities

The making, shaping and treating of the thousands of individual steels, a few of which are portrayed on the cover of this report, have required the investment of billions of dollars in costly and complex plant and equipment. Such facilities are needed to convert raw materials into steel and for rolling, heating, treating, drawing, cutting, cooling, cleaning, and coating the steels, Numerous other facilities are needed to provide water, air, fuels, oxygen, power, storage, transportation and handling.

The facilities required may be illustrated by the production of electrolytic tin plate. Numerous facilities are necessary to convert an ingot which may be 38 inches by 44 inches in cross-section and about 8 feet high into 5

miles of product only one-hundredth of an inch in thickness and 34 inches wide. Furthermore, because there are hundreds of uses for tin plate, these facilities must be designed to produce tin plate from 3 different types of steel, in 18 different steel thicknesses, in 8 different degrees of stiffness, and in 10 different tin coatings to meet various packaging requirements. Tin plate is produced in coils weighing as much as 20,000 pounds or in individual pieces about a yard long weighing as little as one pound.

Just as important as the investment in the facilities which directly process the steel, but perhaps less generally recognized, is the investment in raw material reserves and the means of mining and transporting these materials. On the average, U. S. Steel has mined and moved nearly 100 million tons of ore, coal and limestone per year.

To insure the continued availability of economical raw materials, U. S. Steel continued construction on several major raw material projects in 1961. Quebec Cartier Mining Company made some trial shipments of iron ore concentrates in 1961 from its mine at Gagnon in the Province of Quebec, Canada. Mining and beneficiation facilities in Wyoming also are being constructed to provide agglomerated iron ore from taconite for U. S. Steel's western operations. Initial shipments from the Wyoming facilities are expected late in 1962.

In steelmaking and processing equipment, a high speed six-stand cold reduction mill is under construction by the Tennessee Coal & Iron Division to produce thin steels of highest quality for tin plating. A completely modernized bar mill in the Chicago area now supplies a wide range of coiled bar products competitive in quality and coil size. Buttweld pipe of improved quality is now available from National Tube Division's recently completed mill. A new plate mill is nearing completion in the Chicago area; this

will combine features of a 160-inch and a 210-inch wide mill and will produce wider plates of higher surface quality and more uniform thickness than now available anywhere else in the world.

Other recently completed projects include new primary rolling facilities and an additional processing line for heat treating plates in the Pittsburgh area, and new structural and slabbing mills in the Chicago area. Construction progressed in various areas on sheet and tin plate producing facilities, including continuous lines for annealing, pickling, galvanizing and aluminum coating. Facilities for production of additional cement were completed and several cement distribution stations were authorized.

During the year U. S. Steel completed arrangements with Teri-Societa per l'Industria e l'Elettricita-S.p.A., an Italian company, for equal participation in a new Italian steel company formed to manufacture stainless steel mill products for sale particularly in the European Common Market area. The mill is scheduled to begin operating late in 1963 and is expected to produce about 30,000 tons of stainless steel mill products annually. The new company is called Terninoss Acciai Inossidabili-S.p.A.

Bahama Cement Company, a subsidiary of U. S. Steel, is carrying forward a plan to build a cement plant on Grand Bahama Island, 80 miles off the Florida coast. This plant will produce cement from local raw materials to serve Bahama, United States and other world markets.

New And Improved Steels

Maintenance of competitive leadership requires continuing research to improve existing steels and to develop new steels that better serve the needs of customers. New and improved steels depend on a store of knowledge of how the internal structure of steels can be changed and

how the changed structures will perform. This knowledge is continuously being expended at U. S. Steel's Fundamental Research Laboratory.

Integrated research, as undertaken by U. S. Steel, demands that ideas for a new or improved product be carefully evaluated by many departments to determine its marketing potential, competitive advantage, technical and engineering feasibility, and profitability. Starting with what is already known, research scientists and technicians literally build the new steel. Various compositions are made and tested, and the most promising of these are further improved and again thoroughly tested. Experimental products in their final form are fabricated to permit testing and evaluation in actual use. Before commercial production begins, numerous determinations must be made with respect to patent matters, facilities and their location, availability of cash, personnel requirements, inspection and testing practices, and methods of distribution. During marketing trials, scientists, engineers and other technical personnel assist customers in solving fabrication, handling, or other problems that may arise in using a new material. Research continues after commercial production is achieved in order to apply this new knowledge to the development of even better steels.

In recent years, U. S. Steel has introduced on the average at least one new or improved product per month. One recently developed and patented steel was introduced as USS "T-1" Type A constructional alloy steel. This new steel is a good example of "tailor-making" a steel that will best fit a specific application at a minimum cost. "T-1" Type A steel, available in thicknesses of one inch or less, provides the same properties of high strength coupled with toughness and weldability as the original "T-1" steel in the same thicknesses but at a cost saving to the customer of as much as 15 per cent.

Also, U. S. Steel recently announced a new patented steel improvement which will bring outstanding cost and weight savings to customers. This improvement greatly extends the range of usefulness of the widely used USS COR-TEN high strength steel. Previously USS COR-TEN steel met its highest minimum strength requirement only in thicknesses up to ½ inch, but with the improvement this strength level can be obtained in thicknesses up to 1½ inches. This steel is used for bridges, buildings, transportation equipment and earth moving machinery.

Hollow structural tubing was added to U. S. Steel's family of construction steels in 1961. This new product line provides design advantages of strength combined with light weight; it also has exceptionally high structural efficiency, particularly under compression. Its rectangular or square shape provides a pleasing appearance and makes it suitable for exposed applications. Hollow structural tubing is available in the traditional steel grades as well as in the newly developed structural grade of steel technically known as ASTM A-36. This grade of steel, which is available for all structural products, has about ten per cent greater yield strength and should result in weight savings and lower cost to customers.

The greater usefulness of new and improved steels, and hence their greater sales potential, may mean either increased steel usage or the substitution of a new and better steel for an older one. Enhancing the usefulness of products made from steels and creating new applications for steels are important keys to continued growth in the use of steels.

Expanding Markets For Steels

Steels presently serve a wide range of markets because of their versatility. To meet the aggressive competition which exists in all of these markets, U. S. Steel's marketing

program seeks to accomplish three things: First, to assist steel-consuming industries in expanding their markets both for their present products and for other products which are or can be made of steel. Second, to establish the advantages of steels in the minds of all people who play a part in determining the materials used in products of all kinds. Third, to persuade those individuals who select the source from which steels will be purchased to buy them from U. S. Steel.

This program is adapted to the specific competitive problems encountered in each market. For example, U. S. Steel is collaborating with the homebuilding industry to expand the use of steels in residential construction. Recent developments by members of the homebuilding industry include a new insulated steel door and frame unit, which reduces heat loss, is economical in price, is relatively soundproof and will not warp, swell, crack or chip. United States Steel Homes Division has announced a new interior wall partition system utilizing steel studs, which in preassembled home components makes a more rigid wall, reduces home erection and finishing costs, improves wall appearance and could increase the market for steel in residential construction.

Another U. S. Steel marketing program is directed at the automobile buyer. This program emphasizes steels' contribution to ruggedness, reliability, beauty, safety and comfort in the 1962 cars.

New design concepts effectively utilizing U. S. Steel's family of construction steels have been described to industrial designer and architects through seminars and technical publications, with favorable reaction.

The aggressive pursuit of opportunities to expand all uses of steels, the continued substantial investment in better facilities, the constant improvement of existing

steels, and the discovery of new and better steels are all part of progress. Progress is achieved when all of these factors yield a product which can be marketed profitably in competition with steels from other producers, both at home and abroad, and with substitute materials. The risks and effort in these many undertakings are great, but so too are the rewards: more and better job opportunities for the employes, more and better goods for the consumer and more attractive returns for the risk-taking owners.

THE PEOPLE OF U. S. STEEL

Competitive success of a company depends upon more than facilities. Important among other factors are the skills, knowledge, interest and attitude of its people. Products, progress, payrolls and profits come from people efficiently working together.

Employe Training And Development

As processes for the production of steel continue to evolve technologically and as facilities are modernized, the specific skills required of people also change. An Advanced Technical Study Program is one of the many programs offered to interested U. S. Steel people through which they can acquire new skills and remain abreast of technological developments. On-the-job training and retraining continue and about 900 employes participated in the Trades Apprentice Training Program in 1961.

Employe Safety

U. S. Steel's long dedication to the basic goal of safe working conditions has brought outstanding results. During 1961 the accident frequency rate in the steel producing operations equaled the record low of 0.79 per million manhours set in 1960. This compares with 1.05 in 1959 and 2.66 in 1950. Recognition by the National Safety Council and other agencies was earned by a number of plants, mines

and other operations for their safety performances. Efforts continue toward reaching the ultimate goal of total elimination of injury in every area of operations.

Union Employe Matters

Efforts are constantly being made to maintain harmonious relations with numerous unions that represent from a few dozen to many thousands of employes and with whom U. S. Steel must periodically negotiate scores of labor agreements. U. S. Steel believes that collective bargaining to be constructive must be conducted within the framework of pertinent competitive factors and with sincere efforts to achieve harmony and avoid conflict. Occasions arise, however, when it is necessary for U. S. Steel to oppose demands which outwardly appear to be in the interest of certain union-represented employes, but which, on examination, prove to be basically unsound for all employes, the stockholders and the public. Such opposition reflects U. S. Steel's sincere belief that both parties have an obligation and responsibility to face economic realities.

Hourly employment costs were increased during 1961 under the terms of the January 4, 1960, labor agreement with the United Steelworkers of America. Wage rates were increased in October, 1961, ranging from 7 to 10 cents per hour including an increase of 0.1 cent per hour in increments between the job classes. In addition, the cost-of-living adjustment was increased to 18.5 cents per hour from 17 cents in accordance with the terms of the contract.

The agreements with the Steelworkers covering insurance, pensions and supplemental unemployment benefits continue in effect through December 31, 1962, but are subject to renegotiation at the same time as the basic labor agreements which expire on June 30, 1962.

U. S. Steel is actively participating in the committees on human relations research and on local working conditions provisions established by the 1960 agreement with

the Steelworkers. It is hoped that through the exchange of views progress may be achieved in developing mutual understanding so essential to the process of free collective bargaining.

The contract with the United Mine Workers of America negotiated in December 1958 by the Bituminous Coal Operators Association on behalf of its members, including U. S. Steel, and terminable on or after November 30, 1959, on 60 days' advance notice by either party, continued in effect during 1961. Payments made to the United Mine Workers of America Welfare and Retirement Fund in connection with U. S. Steel's coal mining operations during 1961 amounted to $6.1 million.

Under contract check-off provisions, $8.0 million was deducted in 1961 from wages of employes for union dues, service charges, initiation fees and assessments, and remitted to authorized union officials. The corresponding amount deducted and remitted in 1960 was $9.1 million.

The total number of work stoppages in 1961 was 25 as against 39 in 1960. Man-hour losses in 1961 were estimated at 53,000, as compared with 1.4 million in 1960.

Employes, Hours and Wages

The average number of men and women employed was 199,243. Total payroll in 1961 amounted to $1,420.9 million, and man-hours worked during the year aggregated 364.9 million.

Employes worked an average of 35.8 hours per week during the fourth quarter of 1961 and 35.1 during the year 1961, compared with 34.8 for the year 1960. These average hours exclude time paid for but not worked such as for wage-earned vacations and holidays.

Average hourly and weekly earnings for the years 1961 and 1960, and for the fourth quarter of 1961, exclusive of social security taxes, pensions, insurance and other employe benefits, were:

Plaintiff's Exhibit 31

	Hourly	Weekly
4th Qtr.—1961	$4.00	$143.22
Year 1961	$3.89	$136.80
Year 1960	$3.68	$127.81

Employe Benefit Programs

The amounts provided by U. S. Steel in the years 1961 and 1960 to cover the costs of pensions, social security taxes, insurance and other employe benefits are shown at the bottom of this page. These programs are summarized as follows:

Pensions—Under the U. S. Steel pension plan, pensions were granted during 1961 to 5,513 retiring employes. At the end of the year there were 40,162 former employes or their co-pensioners receiving pensions, or one pensioner for each five active employes. At the end of 1960, the number of persons receiving pensions was 37,401. Pension benefits paid in 1961 were $48.7 million.

Insurance—Under the U. S. Steel group insurance plans, beneficiaries of active and retired employes received death benefits of about $13.6 million in 1961 and $14.4 million in 1960. At the end of the year approximately 230,000 active and retired employes were insured for about $1,583 million of life insurance. Accident, sickness, hospital, surgical, in-hospital medical and major medical benefits of $35.1 million were received during 1961 by employes or their families under the U. S. Steel insurance plans.

S.U.B.—Supplemental unemployment benefit payments to eligible employes, which first became payable in September 1957, have totaled $52.3 million since the inception of the plans, including $10.4 million in 1961.

Savings Fund Plan—About 39,000 salaried employes—over 93 per cent of those eligible—were participating in the Savings Fund Plan for Salaried Employes at year end and were saving on the average about 6.7 per cent of their

Plaintiff's Exhibit 31

base salaries. Employe savings during the year amounted to $22.5 million.

Participants may elect to have all of their savings invested in obligations of the U. S. Government or one-half in such obligations and one-half in U. S. Steel common stock. They elected to invest in U. S. Steel common stock almost 94 per cent of their savings eligible for such investment. These savings, together with company contributions of 50 cents for each dollar of savings by a participant and the dividends received during the year, were used for the purchase of 297,754 shares of U. S. Steel common stock. As of December 31, 1961, 1,224,634 shares, or 2.3 per cent of the outstanding shares, were held for savings fund plan participants. Shares held in the trust, except shares not vested in employes, are voted by the trustee in accordance with directions furnished by the employes. Shares not vested are not voted. Company contributions for the1958 Year Class, under provisions of the plan, become vested to the participants January 1, 1962.

Cost Of Employe Benefits

	1961	1960
Pension costs		
Non-contributory part of pension plan		
Funding of current service cost (including interest on past service cost)	$ 79,376,548	$ 81,426,355
Funding of portion of past service cost	—	—
Total non-contributory pension costs	79,376,548	81,426,355
Contributory part of pension plan—current service cost.....	6,074,920	5,799,229
Total pension costs.....	85,451,468	87,225,584
Social security taxes.....	50,713,097	56,212,263
Insurance costs	54,439,979	55,713,770
Supplemental unemployment benefit costs..	11,280,503	8,467,616
Savings fund costs.....	11,866,940	11,735,880
Payments to industry welfare and retirement funds and other employe benefit costs	26,628,564	27,314,547
Total cost	$240,380,551	$246,669,660

Plaintiff's Exhibit 31

Employe Suggestion Plan—U. S. Steel continues to encourage and reward the creative abilities of its non-management employes through the employe suggestion plan. During 1961, a record number of ideas were accepted and installed for which employes were awarded approximately $600,000.

Pension Trusts

The amounts shown in the table as pension costs are based on actuarial rates determined by an independent actuary and represent full provision for current service costs of pensions for 1961 and for 1960. No payments were made in either year toward the funding of past service pension cost. Past service cost applies against the actuarial cost of non-contributory pensions for service rendered prior to March 1, 1950, the effective date of the present plan. The cost which had not been funded at that date was then estimated at $496 million of which approximately $207 million remained unfunded as of December 31, 1961. There is no unfunded past service cost in connection with contributory pensions, since no service prior to the date of employe participation is involved in determining benefits.

The assets, less reserves, of the combined pension trusts were $1,447.9 million at December 31, 1961, and $1,338.4 million at December 31, 1960, as set forth in the statement appearing on page 38. These funds are held by the trustee, United States Steel and Carnegie Pension Fund (a non-profit Pennsylvania membership corporation), solely for the payment of benefits under the U. S. Steel pension plan, and were adequate at the respective dates to meet currently accruing pension costs incurred since the adoption of the present contributory and of the present non-contributory parts of the pension plan in 1940 and 1950, respectively, as well as to pay full pensions to all those then entitled to receive them.

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United States Steel Foundation, Inc.

United States Steel Foundation, Inc., which was formed in 1953, continues to provide aid for charitable, educational and scientific organizations and activities. A contribution of $6.0 million was made by U. S. Steel to the Foundation in 1961.

Stockholders

The number of registered stockholders at December 31, 1961, was 325,512. No individual stockholder holds of record as much as two-tenths of one per cent of either the preferred or common stock. Excluding shares of common stock held in the Savings Fund Plan Trust, reported on pages 17 and 18, the largest holding of both preferred and common stock among other than individual holders is less than one and one-half per cent of both classes of shares, these shares in turn being beneficially owned by many individuals.

In recent years there has been a marked increase in the percentage of U. S. Steel stock held in names of nominees. Nominee accounts generally represent holdings of various types of financial institutions through which individual savings are channeled. Accordingly, during recent years more and more individuals have acquired an indirect interest in U. S. Steel through holdings of these financial institutions.

During 1961 the number of shares of common stock outstanding increased by 79,835 shares to 54,113,142 shares as a result of purchases upon exercise of options granted in prior years to key management employes under the Stock Option Incentive Plan. No change occurred in the number of shares of preferred stock outstanding.

Public Acceptance

As U. S. Steel completed its sixtieth year, the family of steels had grown in number, in composition and in structure. In fact, these remarkably useful materials had been almost completely revolutionized.

In major talks across the country, various officials took note of the progress in the Sixties by discussing U. S. Steel's new and highly diversified products. And at special conferences, meetings of business and industrial organizations and elsewhere, they likewise talked about labor policies, profits, depreciation—in short, all of the factors which are involved in the competitive challenge confronting the steel industry and the economic problems the industry faces as it looks ahead.

STOCKHOLDERS AND SHARES
DECEMBER 31, 1961

Registered in name of:	Preferred		Common		Total	
	Holders	Shares	Holders	Shares	Holders†	Shares
Individuals—Women	30,875	896,108	116,761	14,306,848	140,692	15,202,956
Men	14,225	474,961	88,999	12,740,554	99,585	13,215,515
Joint accounts	6,406	153,011	53,491	3,869,562	58,491	4,027,573
Total	51,506	1,529,080	259,251	30,916,964	298,768	32,446,044
Charitable and educational‡	1,337	108,581	1,508	606,082	2,631	714,663
Insurance companies	179	421,034	282	911,645	386	1,332,679
Industrial and other companies	695	128,951	2,426	1,245,744	2,928	1,374,695
Trustees, guardians and estates	4,857	231,119	13,933	2,491,828	18,213	2,722,947
Nominees*	770	1,111,330	1,144	14,026,681	1,194	15,133,011
Brokers and others	503	72,716	1,081	3,914,198	1,392	3,986,914
Total	59,847	3,602,811	279,625	54,113,142	325,512	57,715,953

†13,960 are holders of both preferred and common shares.

‡Includes medical and religious organizations, foundations, hospitals, libraries.

**Many investors hold stock in the names of nominees. For example, according to the latest available figures investment companies hold at least 67,700 shares of U. S. Steel's preferred stock and 2,384,835 shares of U. S. Steel's common stock, the greater part of which was registered in the names of nominees.*

Through its television messages, its product information services and its educational activities, U. S. Steel also endeavored to bring about broader public understanding of these problems. Meanwhile, other U. S. Steel speakers were making appearances in many localities before almost 500 different groups.

In response to many requests from many sources, the timely and inspiring half-hour program in color, The Coming of Christ, was sponsored again by U. S. Steel as a holiday television special. To bring the greatest story ever told to still other audiences in plant communities, U. S. Steel made available a 30-minute film of the program to schools, churches, civic and other organizations. During the regular season, America's viewing millions continued to see fine dramatic entertainment on The United States Steel Hour.

U. S. Steel published during the year six new teacher guides for use in screenings of the popular film series, The Making, Shaping and Treating of Steel. Additionally, more than 22,000 requests for U. S. Steel's other educational materials were received from instructors and students in schools here and abroad.

In Memoriam

It is with deep sorrow that there is here recorded the death, on January 1, 1962, of Benjamin F. Fairless, former President, Chairman of the Board and Chief Executive Officer of U. S. Steel as well as a director from 1937 until his death. A steelmaker for almost half a century, Mr. Fairless personified a period of vigorous growth in the American steel industry. He was dedicated to the American way of life and eloquent in defense of free enterprise.

It is also with deep sorrow that the deaths during 1961 of Cason J. Callaway, a director since 1944, and Harry P. Davison, a director since 1952, are recorded.

In this recounting of events there has been considerable emphasis on steels and progress; but there can be no real understanding of growth and progress—either in U. S. Steel or in enterprise generally—without full public recognition of the vital role of stockholders and the indispensable requirement for them to have returns on their investments.

In U. S. Steel, stockholders are of all descriptions and occupations—employes, school teachers, other professional people, housewives, farmers, storekeepers, executives, persons in innumerable other walks of life, and pension trusts, colleges, charitable and other organizations. Holdings of individual stockholders range all the way from a single share to several thousand shares—but in no case more than two-tenths of one per cent of the total shares. Similarly, these stockholders are to be found in virtually every income bracket; and many of them, especially those who have retired from active work, are dependent to a considerable degree upon income from their shares.

Just as the hope of profit and the avoidance of loss is the motivating concept of the hundreds of thousands of individual businesses which compose all enterprise in America, so the stockholder is an indispensable component of that concept and of each business. When he is rewarded for his investment through dividends his willingness to invest continues. As his investment thrives it forms the creative nucleus which gives birth to new work for the workers, new human conveniences and comforts and new defensive strength for the nation.

In the constant tug of war among the interests of workers as represented by unions, the interests of customers in seeking the lowest possible prices and the unrelenting governmental demands for greater taxes, there must not be any neglect of the stockholder. The interprise in which

he invests must earn and return a profit or it will cease to exist and all those dependent upon it—not only the stockholder—will be the losers.

Recognition of the vital place of the stockholder in the chain of production and of the national necessity for returns sufficient to attract his investment needs constant reaffirmation.

/s/ Roger M. Blough
Chairman, Board of Directors

February 27, 1962

FINANCIAL SUMMARY

Wages and Work

Following a long strike in 1959 U. S. Steel and the United Steelworkers of America entered into a labor agreement based on terms recommended by Government officials. The basic agreement expires on June 30, 1962. At the time, U. S. Steel reported that it would result in hourly employment cost increases of 3½ to 3¾ per cent per annum—as it has. This was substantially less than the eight per cent per annum such increases had averaged over the preceding twenty years, but still too great to be regarded as non-inflationary.

Since then there has been increasing awareness that the unremitting wage-cost inflation which started nearly a quarter of a century ago in America must, if unchecked, proceed to the point where it threatens the nation's growth in production and employment, seriously handicaps its capability in international commercial competition, and thereby undermines the international stability of the dollar as manifested in gold losses and recurring balance of payments crises. The need to discover how to make non-inflationary wage agreements and the awareness of this need thus also grew.

The matter is worthy of the continuing consideration of all citizens. It is of particular interest to U. S. Steel—employes, stockholders and management—because the steelworkers have outdone all other groups in advancing the employment costs of manufacturers. It follows that as the needed solution can first be found in, by and for the steel industry it can be more acceptable to other employe groups whose achievements in these respects have been less.

Wage Facts

It is not difficult to establish the supporting facts. The U. S. Bureau of Labor Statistics—BLS—has for many years collected and published data on the average hourly earnings and numbers of production and related workers in manufacturing industries. The data on hourly earnings do not purport to measure the full cost of an hour of work, as will be described below. But assuming that the per cent of this inadequacy of measurement is somewhat similar for the data of the several industries, their relationship may also serve as a comparison of the hourly employment costs of wage earners in those industries.

In the chart on page 25 each industry is represented by a bar. The width of the bar is proportional to the number of wage earners, and the height of it represents the hourly earnings. The bars are arranged from left to right in diminishing order of height.

These data disclose that in the fourth quarter of 1961 the steelworkers, accounting for a little less than four per cent of the total workers, had an average hourly earnings rate that exceeded by a substantial margin the rate in any other manufacturing industry. Their hourly pay was about 38 per cent greater than the average for all manufacturing. It was approximately double that of the much more numerous wage earners engaged in the manufacturing apparel

and other finished textile products. It was about eleven per cent greater than that of the automobile industry, with which the steel industry is often compared.

Steelworkers have not always had a wage advantage over other workers as great as they presently enjoy, and this is relevant to their current burden of leadership in the wage spiral. In an adjoining chart the advance in BLS average hourly earnings is shown over the period, 1940 to 1961, for each manufacturing industry for which the data have been compiled. The relatively more rapid increase for the steel industry is clearly apparent. The increase since 1940 is 285 per cent compared with 260 per cent for all manufacturing.

The historic wage inflation displays two other noteworthy features: First, it has an inexorable and unremitting quality—an insensitiveness to economic influences. One can scarcely discover from viewing it, for example, when there was war or peace, "tight" or "soft" money, or business expansion or contraction. It thus appears to be powered primarily by non-economic forces and unaffected by economic controls such as "tight money." Second, the tendency for all the wage rates to advance together overshadows tendencies for disparities to develop among them, thus indicating a common originating force or a mutually imitative procedure that results in spreading wage inflation horizontally across the nation's wage fabric, regardless of where it originates.

Hourly Earnings vs. Employment Costs

It was earlier noted that the BLS earnings data do not, by a substantial margin, record the total cost of an hour's work. The reasons for that were fully set forth in U. S. Steel's annual report for 1959 (pp. 27-28). The big part of the disparity is due to the exclusion by the BLS of the

effects of payments for time not worked and for many employe benefits. The disparity has increased over the years. In 1940 U. S. Steel's hourly employment cost was 11 per cent greater than the earnings amount reported by BLS for the steel industry. It is now about 32 per cent greater. These facts are displayed in the chart on page 26.

Economic Explanation Of Wage Differentials

There are a number of conventional economic explanations or justifications for differences that may prevail between the average wage rates of various industries. Among them are the different degrees of training, experience and responsibility required for the performance of the tasks; the physical onerousness of the tasks; the accident or health hazards incurred; and the continuity of employment that can be expected.

There is no question that the qualities of dependability, training and skill are required of steelworkers to a greater degree than in many other industries. The steel industry is one in which massive investment in costly equipment is required, the operation of which cannot be wisely entrusted to inexperienced or irresponsible people lest serious damage result. A number of its operations are of a "round-the-clock" nature, interruption of which can be destructive of the expensive equipment involved.

On the other hand the physical strength required and the onerousness of some kinds of work that many years ago characterized the operations of the steel industry have largely disappeared from it. The industry has gradually become more mechanized. Elimination of accident hazards has also been diligently pursued for decades, and the industry's safety record is among the best achieved by any industry. The accident hazard is much less than that which one encounters in his home.

With regard to relative employment continuity, insight may be gained from the layoff rates of industries as compiled by BLS. They are available for twenty industry groups for the years 1949 to 1960 inclusive. Over that period the layoff rate for the steel industry averaged only two-thirds that of the twenty industries combined. In no year did it exceed that of the automobile industry, and for the twelve years it averaged only one-third that of the automobile industry.

In short, a number of conditions which may have served formerly to explain a wage advantage for employes in the steel industry over those in other industries no longer exist.

Fiat Wage Inflation

If the more usual economic considerations do not suffice to explain or provide a suitable basis to deal with the cost inflation, then others must be sought. For insight into its nature and mechanisms is essential for policy formation if we are to escape the crises toward which it speeds us. In the 1930's under the pressures of the long depression the nation decided that in determining wages labor monopolies would be substituted in large measure for individual competition. With the legislative displacement of individual bargaining over terms of employment in favor of collective bargaining with Federally certified "exclusive" bargaining agents, and with the expansion of this concept so that those agents spanned both company and industry boundaries, tremendous power centers became established, a process enhanced by labor union immunity from laws which others had to obey. This labor power, which some have characterized as virtually "unlimited," displaced the competitive labor market forces upon which there had been historic reliance for automatic maintenance of wage and price stability, economic equity and growth, and individual independence.

It is from this that insight may be gained into what might well be called "fiat wage inflation." It is not primarily an economic phenomenon as such, although grave economic consequences flow from it; it is, instead, a power phenomenon.

Wage Criteria

With virtual elimination of competition among employers for employes, and among employes for jobs, as the automatic means of establishing fair wages, employers and unions have, ever since, been groping for and quarreling about alternate criteria. Among the first to be tried was an application of the so-called purchasing power theory: Greater wages were supposed to cure unemployment because they put buying power into the pockets of the mass buyer. This overlooked the fact that the buying power came right out of the same or other pockets to cover the higher prices required to cover the higher wages secured. It was tried out in the 1930's. It did not cure unemployment. There were over eight million—14.6 per cent of the labor force—unemployed in pre-war 1940. Its net result was inflation. Another theory was that wages should go up (but not necessarily down) with the cost of living. This was utilized during and following World War II, and "escalator" provisions remain in a number of labor agreements today. But once wages are escalated, the cost-covering price increases then call for additional wage escalation under the cost-of-living theory, thus perpetuating the wage-price inflation spiral. Another theory was that profits—particularly so-called "undistributed profits"—constituted "a stagnant pool of purchasing power" that should be squeezed out and put to work through enlarged employe compensation. But the fact is, as is increasingly coming to be recognized, profits are not such a pool; they are, instead, an indispensable part of the nation's income,

albeit a small part. Profit and the prospect of profit are the only energizers of the investments that create new self-sustaining productive jobs. As may be noted in the accompanying chart, profit-squeezing and job-prevention are one and the same thing. Profits have been squeezed; and that is a big reason why there is a serious unemployment problem. It is not mere happenstance that the down-trend in profits has been accompanied by an up-trend in unemployment.

Productivity

Among the more recently exploited criteria for wage setting is a thing called "productivity." Both the concept and the statistics involved are much abused. The notion appears to be that if an enterprise or industry learns how to produce more efficiently, then it can pay more to its employes without raising its products' prices; and if it can do this, it is proper to force it to do so. In practice the obvious corollaries are that it has become impractical for profits to increase or prices to decrease.

It is not possible to measure productivity changes for a firm or an industry with precision. But even if it were, the theory is unsatisfactory. If more money is paid to those having jobs, then there is less available for rehiring those previously disemployed, thus rendering unemployment chronic. If profits are squeezed, then the incentives and mechanisms for creating new jobs are stultified, and new job seekers swell the unemployed rolls. Corporate income taxes are also diminished. This leaves greater taxes for others to pay or, alternatively, it pushes government toward inflationary deficit financing.

Since dependable productivity measurements for firms and industries are unavailable, advocates of the theory use and abuse output per man-hour data on the pretense that they are productivity measurements. A firm may

purchase costly equipment and thereby secure more output per employe man-hour. But to call it a true productivity increase is erroneous, for the calculation leaves out the man-hours required to build the equipment and the costs of acquiring and having it. True productivity increases are thus virtually always much less than output-per-man-hour increases. Only for the nation as a whole do output-per-man-hour measurements tend to approximate—though still exceed—true productivity measurements, because only then are taken into account all the man-hours spent in producing what various industries and firms have to buy. Studies by the National Bureau of Economic Research indicate that national increase in total productivity has, over the years, averaged about two per cent per annum.

Hours required for selling, engineering, research and related activities are facts of American business life. When business is good they are spread more thinly over the expanded volume and vice versa. This arithmetically results in output-per-man-hour changes that closely resemble the changes in volume. It is clearly apparent in the adjoining chart showing year-to-year percentage changes in the steel industry's total shipments and shipments per man-hour.

The rise in output per man-hour from a period of low rate to one of higher rate operations tells nothing at all about whether a company has learned how to be more efficient at either the low or the higher level; it may signify only that volume has increased. Yet if people can be beguiled into believing the change does signify increased efficiency, then the door is opened to self-serving abuse of statistical procedure. One can pick a recent short period of high-level operations and compare the output per man-hour with one in a prior period of low-level operations, as

in 1958, for example. In that fashion a "big" increase in productivity can, however falsely, be claimed.

An honest indication of the trend in output per man-hour—but not in true productivity—can be obtained by fitting a trend line to the data for a substantial number of years. Such a trend line fitted to steel industry data has an increase from 1940 to 1961 equivalent to 1.7 per cent per annum compounded.

It appears that the valid usefulness of the productivity concept is more a matter of over-all economic description than one of industry-by-industry applicability in wage rate determination. It tells us, first, that if the nation's average wage level rises more rapidly than the nation's over-all increase in productivity, then either a cost-covering increase in the general price level or widespread unemployment is inevitable. Secondly, since wage increases tend to spread throughout the wage fabric, no increase in employment costs in excess of the nation's long-term rate of productivity increase can be regarded as non-inflationary.

Abuse Of Power

In the absence of socially accepted wage criteria to take the place of a competitive labor market in the maintenance of wage-price stability, wage costs over the past twenty-five years have mostly reflected the unfortunate rivalry of union leaderships. With great power in their hands, they have been in position to use it to try to outdo each other in gaining wage increases. This has been termed "the game of leapfrog up the ladder of inflation." The only apparent limit is a fear that too great an abuse of the power would provoke public reaction leading to a recall or curbing of the power by Congress which created it.

In such a competition it is to be remembered that the strike weapon is a more deadly instrument in some industries than in others because of the varying natures of the industries. A strike in vital power or transportation industries can bring the affected public to its knees in a hurry, for example; it thus has superior power to evoke appeasement. Steel industry processes, as earlier noted, render it especially vulnerable to stoppages; and it is also a supplier to virtually all other industries. Protracted strikes in it can bring much of industry to a halt, thus provoking public intervention to speed the required appeasement. This is undoubtedly a significant part of the reason that the steel union has emerged as the wage-inflation leader.

Toward A Critical Problem

During World War II and the reconstruction period following it, the backlog demands for all kinds of goods were greater than the war-disrupted productive capacities to supply them. The American cost inflation was not then subject to much check by foreign competition. That is changing rapidly. Foreign producers with recreated modern capacities are increasingly able to compete with American producers in international markets. Those markets will be served, in the last analysis, by the low-cost producers. American labor union power does not extend to foreign labor. Its administrators cannot compel foreign labor cost inflation equal to that at home. Thus America is costing itself out of foreign markets, and out of the jobs of producing for them, while foreign producers are invading our domestic markets. American capital is competitively required more and more to establish factories and create jobs abroad in order to have the lower cost needed to share in those markets.

These developing trends are observable in the exports and imports of steel products. The shrinkage in exports and enlargement of imports over recent years have been

marked, as shown in the chart. The signficance thereof is emphasized by noting that if the 1961 export-import situation had been equal to that of just four or five years earlier, about 40,000 more people in the United States would have been employed by the steel industry in 1961. It can therefore properly be remarked that against total steel production in America the shrinkage of exports coupled with the increase in imports neither lacks significance nor, like the early leaks in a dike, can be ignored lest more significant events occur if the leaks are not remedied.

No one can predict how the developing problem will be solved, but alternatives may be noted. Organized American labor, now that it has achieved great economic and political power, may decide to refrain from exercising its power in ways that promote inflation and unemployment. Such a decision may be crystalling as this is written, and, if so, it spells a happier future for America. Or Congress, with whom original responsibility for fiat wage inflation rests, may choose to curb it in some fashion.

If, on the other hand, the cost inflation remains unhalted, then it seems quite clear that we will not be able to balance what we buy or give abroad with what we sell or get from abroad. In that event we may well be called upon to continue to pay the difference out of shrinking gold stocks and run the risk of international loss of confidence in dollar stability. No nation can endlessly sustain cost inflation that runs ahead of that in other countries without its currency depreciating against their currencies. History abounds with evidence of this truth. There can be resort to expedients to delay the process but they must inevitably prove to be but temporary because they are aimed at effects rather than causes and do not reach the root of the problem. There is only one real solution of the unfavorable balance of payments situation; it is the development or restoration of greater ability to compete in international markets.

SUMMARY OF 1961 FINANCIAL OPERATIONS

Additions to working capital		
Income		$190,182,207
Add—Wear and exhaustion of facilities		210,497,915
Proceeds from sales and salvage of plant and equipment		4,402,663
Proceeds from sale of securities		
4½% Notes payable to banks	$200,000,000	
4½% Sinking Fund Debentures Due 1986	295,200,000	
Common stock under Stock Option Incentive Plan	3,966,725	499,166,725
Total additions		904,249,510
Deductions from working capital		
Expended for plant and equipment	$326,818,403	
Added to costs applicable to future periods	17,964,921	
Repayment of long-term debt	28,605,700	
Dividends declared on preferred and common stocks	187,498,728	
Miscellaneous deductions	3,974,618	
Total deductions		564,862,370
Increase in working capital		$339,387,140
Working capital per Consolidated Statement of Financial Position		
December 31, 1961	$947,481,745	
December 31, 1960	608,094,605	
Increase		$339,387,140

Plaintiff's Exhibit 31

CONSOLIDATED STATEMENT OF INCOME

	1961	1960
Products and services sold	$3,336,501,402	$3,698,494,931
Costs		
Employment costs		
Wages and salaries	1,382,353,284	1,453,317,932
Pensions and other employee benefits *(see pages 17 and 18)*	240,380,551	246,669,660
	1,622,733,835	1,699,987,592
Products and services bought	1,022,419,640	1,091,166,958
Wear and exhaustion of facilities	210,497,915	208,424,291
Interest and other costs on long-term debt	29,900,379	16,942,052
State, local and miscellaneous taxes	99,767,426	107,803,048
Estimated United States and foreign taxes on income	161,000,000	270,000,000
Total	3,146,319,195	3,394,323,941
Income	190,182,207	304,170,990
Dividends declared		
On cumulative preferred stock *($7 per share)*	25,219,677	25,219,677
On common stock *($3 per share)*	162,279,051	162,016,191
Income reinvested in business	$ 2,683,479	$ 116,935,122

Plaintiff's Exhibit 31

Consolidated Statement of

Financial Position

	Dec. 31, 1961	Dec. 31, 1960
Current assets		
Cash	$ 281,396,885	$ 276,501,195
United States Government and other marketable securities, at cost (approximates market)	360,812,868	175,218,208
Receivables, less estimated bad debts	267,593,085	218,523,857
Inventories *(details on page 35)*	793,334,701	725,599,116
Total	1,703,137,539	1,395,842,376
Less		
Current liabilities		
Accounts payable	381,148,730	373,065,094
Accrued taxes, less United States Government securities of $87,600,000 at December 31, 1961 and $154,000,000 at December 31, 1960	295,191,001	336,194,106
Dividends payable	46,890,713	46,835,794
Long-term debt due within one year	32,425,350	31,652,777
Total	755,655,794	787,747,771
Working capital	947,481,745	608,094,605
Miscellaneous investments, less estimated losses	50,934,932	43,036,483
United States Government securities set aside for property additions and replacements	300,000,000	300,000,000
Plant and equipment, less depreciation *(details on page 35)*	2,899,471,135	2,787,553,310
Operating parts and supplies	49,002,451	48,898,855
Costs applicable to future periods	69,483,240	51,518,319
Total assets less current liabilities	4,316,373,503	3,839,101,572
Deduct		
Long-term debt *(details on page 35)*	893,400,397	422,778,670
Reserves for insurance, contingencies and accident and hospital expenses *(details on page 35)*	117,091,540	114,455,398
Excess of assets over liabilities and reserves	$3,305,881,565	$3,301,867,504
Ownership evidenced by		
Preferred stock, 7% cumulative, par value $100 (authorized 4,000,000 shares; outstanding 3,602,811 shares)	$ 360,281,100	$ 360,281,100
Common stock (authorized 90,000,000 shares; outstanding 54,113,142 shares at December 31, 1961 and 54,033,307 shares at December 31, 1960)	2,945,600,466	2,941,586,404
Par value $16⅔ per share	$ 901,885,700	
Income reinvested in business *(see page 31 for addition of $2,683,479 in 1961)*	2,043,714,766	
Total	$3,305,881,566	$3,301,867,504

Plaintiff's Exhibit 31

NOTES TO FINANCIAL STATMENTS

Common Stock

Under the Stock Option Incentive Plan approved by stockholders in 1951 which made available up to 2,600,000 shares, options to purchase common stock have been granted at various times beginning in 1951 to key management employes, such shares of stock to be made available from authorized unissued or reacquired common stock at market price on the date the options are granted. An option may be exercised in whole at any time, or in part from time to time, during the option period, except that during the first year of the option period it may be exercised only in the event of death or retirement of the optionee. The option period begins on the date the option is granted and ends ten years thereafter, except in cases of death, retirement or other earlier termination.

No options to purchase stock were granted under the Plan in 1961. By exercise of options granted in prior years, 104 optionees purchased 2,000 shares at $20.50 per share, 2,550 shares at $18.50 per share, 39,375 shares at $48.00 per share, 35,410 shares at $55.00 per share and 500 shares at $82.00 per share during 1961.

At December 31, 1961, 254 optionees held options to purchase 435,170 shares at prices ranging from $18.50 to $82.00 per share for a total of $31,489,685 on options granted at various times beginning in 1953, and 271,200 shares were available for future options.

U. S. Government Securities Set Aside For Property Additions And Replacements

At December 31, 1961, completion of authorized additions to and replacements of facilities required an estimated further expenditure of $300,000,000 for which a like amount of U. S. Government securities had been set aside.

Plaintiff's Exhibit 31

Wear And Exhaustion Of Facilities

For a number of years, U. S. Steel has followed the policy of reflecting accelerated depreciation on the cost of new facilities in the first few years of their lives when the economic usefulness is greatest. As permitted under the Internal Revenue Code the declining balance method of depreciation is being applied to the cost of certain facilities; and the cost of certain other facilities is covered by Certificates of Necessity under the Defense Production Act of 1950 and is being written off at the rate of 20 per cent per year. The effect thereof is to charge to income a greater portion of their cost in the earlier years of life and, therefore, follows the principle of accelerated depreciation.

The amount included in wear and exhaustion for the cost of facilities not covered by the declining balance method of depreciation or Certificates of Necessity is for the most part related to U. S. Steel's rate of operations.

Reserves For Insurance, Contingencies And Accident And Hospital Expenses

U. S. Steel is, for the most part, a self-insurer of its assets against fire, windstorm, marine and related losses. The insurance reserve of $50,000,000 is held available for absorbing possible losses of this character, and is considered adequate for this purpose.

The reserves for contingencies and accident and hospital expenses of $67,091,540, provided mainly in previous years by charges to operations, are held for exceptional unanticipated losses other than those covered by the insurance reserve.

Plaintiff's Exhibit 31

Other Items

Products and Services Sold—Products and services sold includes interest, dividends and other income of $34,807,498 in 1961 and $49,637,579 in 1960.

Wages and Salaries—Wages and salaries totaled $1,420,868,856 in 1961 of which $1,382,353,284 was included in costs of products and services sold and the balance was charged to construction.

Products and Services Bought—Products and services bought reflects the changes during the year in inventories and deferred costs. These items increased during 1961 approximately $86,000,000.

INDEPENDENT AUDITORS' REPORT

Letterhead of—

Price Waterhouse & Co.
56 Pine Street
New York 5

February 27, 1962

To the Stockholders of
United States Steel Corporation:

As independent auditors elected at the annual meeting of stockholders of United States Steel Corporation held on May 1, 1961, we have examined the Consolidated Statement of Financial Position of United States Steel Corporation and subsidiaries at December 31, 1961 and the Consolidated Statement of Income for the year 1961. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Plaintiff's Exhibit 31

In our opinion, the accompanying Consolidated Statement of Financial Position and related Statement of Income present fairly the position of United States Steel Corporation and subsidiaries at December 31, 1961 and the results of the year's operations, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

/s/ Price Waterhouse & Co.

Plaintiff's Exhibit 31

Details of

Selected Items

Dollars in millions

Plant and equipment

	Facilities (at cost)				Less depreciation and depletion			
	Land	Plant	Transportation	Total	Plant	Transportation	Total	Net
Balance December 31, 1960	$83.5	$5,421.2	$798.3	$6,303.0	$3,131.4	$384.0	$3,515.4	$2,787.6
Additions	1.8	310.2	14.8	326.8	196.5	15.8	212.3†	114.5
Deductions	.3	71.7	9.3	81.3	71.4	7.3	78.7	2.6‡
Balance December 31, 1961	$85.0	$5,659.7	$803.8	$6,548.5	$3,256.5	$392.5	$3,649.0	$2,899.5

†Wear and exhaustion of $210.5 million shown in the Consolidated Statement of Income comprises depreciation and depletion of $212.3 million (including amortization of emergency facilities of $9.0 million), less profit of $1.8 million resulting from sales.

‡Includes $4.4 million proceeds from sales and salvage of plant and equipment, less profit of $1.8 million resulting therefrom.

Reserves

	Deducted from:		Other		
	Current receivables	Miscellaneous investments	Reserve for insurance	Accident and hospital	Total other
Balance December 31, 1960	$12.6	$5.6	$50.0	$ 9.4	$114.4
Additions charged income	.4	—	1.2	20.7	21.9
Deductions	.5	—	1.2	20.7	19.2
Balance December 31, 1961	$12.5	$5.6	$50.0	$ 9.4	$117.1

Inventories

	Ore, limestone, coal and coke	Non-ferrous metals	Semi-finished products	Finished products	Supplies and sundry items	Contracts in progress	Total inventories
December 31, 1960	$292.8	$23.1	$173.3	$165.4	$51.4	$19.6	$725.6
December 31, 1961	274.4	23.9	216.4	188.0	51.2	39.4	793.3

The major portion of inventories is carried at cost as determined under the last-in, first-out method, and the remainder is carried at cost or market, whichever is lower. The last-in, first-out method was first adopted in 1941 and extended in 1942 and 1947.

Long-term debt

Description	Interest rates	Years of maturity	Outstanding Dec. 31, 1961	Increase in year
United States Steel Corporation				
Sinking Fund Debentures (Callable)	4½	1986	$300.0	$300.0
Sinking Fund Debentures (Callable)	4	1983	300.0	—
Serial Debentures (Callable)	Var.	1962-1964	90.0	30.0
Bessemer and Lake Erie Railroad Company				
Pittsburg, Bessemer and Lake Erie Railroad Company				
First Mortgage Series A (Callable)	2¾	1996	9.6	.2
Duluth, Missabe and Iron Range Railway Company				
First Mortgage Serial Bonds (Callable)	2½	1962	1.2	1.2
Elgin, Joliet and Eastern Railway Company				
First Mortgage Series A (Callable)	3¼	1970	12.8	—
Quebec Cartier Mining Company				
Notes payable to banks	4½	1963-1966	200.0	200.0
Union Railroad Company				
First and Refunding Mortgage Series A (Callable)	3	1996	6.5	.1
Purchase money obligations	—	—	5.5	2.9
Bonds covered by deposits with trustees	—	—	.2	—
Total long-term debt			925.8	471.4
Less amount due within one year			32.4	.8
Long-term debt due after one year			$893.4	$470.6

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Plaintiff's Exhibit 31

U. S. Steel's

Operating and Financial Story

1946-1961

Summary of Operating Data (net tons in millions)

Year	Total ores mined	Total fluxes produced	Total coal mined	Total coke produced	Total iron produced	Ingots & castings produced	Steel products shipped	Employment statistics: No. of employes	Weekly hours	Hourly earnings	Weekly earnings
1946	38.0	20.9	24.5	15.2	15.9	21.3	15.2	266,835	35.0	$1.426	$ 49.91
1947	47.4	24.8	29.6	20.8	21.5	28.6	20.2	286,316	38.5	1.550	59.64
1948	48.9	26.9	26.8	21.2	22.2	29.3	20.7	296,785	38.2	1.680	64.21
1949	41.5	23.7	19.2	17.7	19.5	25.8	18.2	291,163	34.3	1.775	60.94
1950	46.3	27.0	22.3	20.1	23.6	31.5	22.6	288,265	37.8	1.828	69.10
1951	57.5	29.2	24.5	21.5	25.8	34.3	24.6	301,328	38.7	2.046	79.24
1952	45.7	26.6	19.2	18.0	22.0	29.4	21.1	294,263	34.7	2.265	78.53
1953	58.7	30.3	26.0	21.6	27.2	35.8	25.1	301,560	37.9	2.394	90.66
1954	37.9	25.2	22.7	18.7	20.9	28.4	20.2	268,142	35.6	2.488	88.47
1955	52.1	29.5	25.2	21.6	26.0	35.3	25.5	272,646	37.5	2.698	101.28
1956	47.4	28.6	23.0	20.6	24.6	33.4	23.9	260,646	37.1	2.926	108.47
1957	57.9	27.6	23.5	22.3	26.4	33.7	23.4	271,037	36.3	3.186	115.75
1958	39.8	20.9	16.8	15.1	18.1	23.8	17.0	223,490	34.2	3.497	119.70
1959	36.4	23.4	15.0	14.8	18.6	24.4	18.1	200,329	35.1	3.776	132.61
1960	50.2	22.3	18.0	16.6	21.2	27.3	18.7	225,081	34.8	3.677	127.81
1961	35.8	20.3	15.2	14.2	19.3	25.2	16.8	199,243	35.1	3.894	136.80

Production data, which are grouped in broad product classifications, include all production of the materials by the operating divisions and subsidiaries and exclude all materials purchased. The average weekly hours and average weekly earnings shown are based on the average monthly number of employes receiving pay. Hourly and weekly earnings exclude social security taxes, pensions, insurance and other employe benefit costs.

Summary of Financial Operations (change in working capital in millions of dollars)

Year	Additions: Income as reported	Additions: Wear and exhaustion of facilities	Additions: Sale of securities	Additions: Miscellaneous other additions	Deductions: For plant & equipment: Total expenditures	Deductions: For plant & equipment: Securities set aside	Deductions: For long-term debt: Total repayment	Deductions: For long-term debt: Added to current debt	Deductions: Dividends declared on stocks	Deductions: Miscellaneous other deductions	Increase in working capital
1946	88.6	68.7		48.6	201.0	*110.0*	5.2	*7.8*	60.0	29.2	28.3
1947	127.1	114.0		5.4	206.6	15.0	4.6	.6	70.9	30.5	*80.5*
1948	129.6	146.0		12.6	275.2	—	5.5	.1	77.4	9.1	*79.1*
1949	165.9	119.7		4.2	179.1	—	5.6	—	81.3	9.5	14.3
1950	215.5	143.9		6.4	179.3	95.0	6.0	*1.8*	117.9	11.4	*42.0*
1951	184.3	162.1		9.5	352.4	—	8.5	*1.6*	103.5	—	*106.9*
1952	143.6	176.9		12.0	469.2	*231.0*	*6.8*	.7	103.5	5.2	*8.3*
1953	222.1	236.6		6.4	361.4	*19.0*	*5.0*	1.5	103.5	3.3	19.4
1954	195.4	261.8	309.5	17.8	227.4	—	5.1	35.3	110.7	—	406.0
1955	370.1	285.2	13.7	6.7	239.8	300.0	44.8	*6.8*	148.1	6.7	*56.9*
1956	348.1	277.6	4.8	29.8	311.8	225.0	42.7	*1.6*	170.1	3.7	*91.4*
1957	419.4	276.0	2.1	7.3	514.9	*110.0*	33.2	*4.7*	186.5	9.0	75.9
1958	301.5	204.9	302.6	7.6	448.1	115.0	27.2	1.8	186.6	21.2	16.7
1959	254.5	189.9	6.5	19.4	366.1	*35.0*	28.9	4.1	187.0	—	*80.8*
1960	304.2	208.4	2.9	8.3	492.4	*195.0*	32.8	*1.1*	187.2	14.9	*7.4*
1961	190.2	210.5	499.2	4.4	326.8	—	28.6	.8	187.5	21.2	339.4

U. S. Steel's

Operating and Financial Story

1946-1961

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Plaintiff's Exhibit 31

Consolidated Statement of Income (dollars in millions)

Year	Products & services sold	Employment costs (1)	Products & services bought	Wear and exhaustion of facilities	Interest & other costs on debt	Income & other taxes	Income		Dividends		Reinvested in business
							Amount	% of sales	Preferred stock	Common stock	
1946	1,496.1	704.5	560.4	68.7	4.8	69.1	88.6	5.9	25.2	34.8	28.6
1947	2,122.8	903.6	839.4	114.0	2.5	136.2	127.1	6.0	25.2	45.7	56.2
1948	2,481.5	1,035.7	1,008.9	146.0	2.4	158.9	129.6	5.2	25.2	52.2	52.2
1949	2,301.7	945.9	885.7	119.7	2.3	182.2	165.9	7.2	25.2	56.1	84.6
1950	2,956.4	1,179.4	1,118.8	143.9	2.2	296.6	215.5	7.3	25.2	92.7	97.6
1951	3,524.1	1,374.5	1,327.9	162.1	2.0	473.3	184.3	5.2	25.2	78.3	80.8
1952	3,137.4	1,322.1	1,307.6	176.9	1.9	185.3	143.6	4.6	25.2	78.3	40.1
1953	3,861.0	1,569.2	1,418.7	236.6	2.1	412.3	222.1	5.8	25.2	78.3	118.6
1954	3,250.4	1,387.0	1,134.3	261.8	5.2	266.7	195.4	6.0	25.2	85.5	84.7
1955	4,097.7	1,614.9	1,355.2	285.2	9.1	463.2	370.1	9.0	25.2	122.9	222.0
1956	4,228.9	1,681.0	1,487.5	277.6	7.7	427.0	348.1	8.2	25.2	144.9	178.0
1957	4,413.8	1,862.0	1,324.2	276.0	7.0	525.2	419.4	9.5	25.2	161.3	232.9
1958	3,472.1	1,488.5	1,085.6	204.9	11.5	380.1	301.5	8.7	25.2	161.4	114.9
1959	3,643.0	1,576.2	1,278.2	189.9	17.6	326.6	254.5	7.0	25.2	161.8	67.5
1960	3,698.5	1,700.0	1,091.2	208.4	16.9	377.8	304.2	8.2	25.2	162.0	117.0
1961	3,336.5	1,622.7	1,022.4	210.5	29.9	260.8	190.2	5.7	25.2	162.3	2.7

(1) Employment costs include pensions and social security taxes and, beginning with 1949, also include payments for insurance and other employe benefits.

Consolidated Statement of Financial Position (dollars in millions)

Dec. 31	Working capital				Securities set aside for plant & equipment	Plant & equipment less depreciation	Other non-current assets (1)	Total assets less current liabilities	Long-term debt due after one year	Reserves for insurance, contingencies & other expenses	Ownership (Stocks and income reinvested) (2)
	Cash and securities	Receivables and inventories	Less—current liabilities	Total working capital							
1946	533.3	421.3	325.5	629.1	140.0	826.9	82.0	1,678.0	81.2	142.2	1,454.6
1947	527.0	438.0	416.4	548.6	155.0	914.2	102.2	1,720.0	77.2	132.0	1,510.8
1948	439.2	535.2	504.9	469.5	155.0	1,300.8(3)	104.8	2,030.1	71.6	125.5	1,833.0(3)
1949	400.1	539.0	455.3	483.8	155.0	1,356.0	106.3	2,101.1	66.0	117.5	1,917.6
1950	472.8	606.5	637.5	441.8	250.0	1,386.6	113.3	2,191.7	61.8	114.7	2,015.2
1951	560.1	652.6	877.8	334.9	250.0	1,571.4	106.6	2,262.9	54.9	112.0	2,096.0
1952	322.3	668.4	684.1	326.6	19.0	1,851.6	107.1	2,304.3	61.0	107.2	2,136.1
1953	431.9	742.4	828.3	346.0	—	1,970.0	103.2	2,419.2	64.5	100.0	2,254.7
1954	639.6	686.4	574.0	752.0	—	1,925.7	97.0	2,774.7	324.1	101.9	2,348.7
1955	567.5	775.6	648.0	695.1	300.0	1,873.7	103.6	2,972.4	286.1	103.7	2,582.6
1956	510.1	815.8	722.2	603.7	525.0	1,878.0	107.4	3,114.1	245.0	105.1	2,764.0
1957	526.3	906.7	753.4	679.6	415.0	2,109.6	116.4	3,320.6	216.5	105.3	2,997.8
1958	507.5	915.6	726.8	696.3	530.0	2,345.1	138.6	3,710.0	487.5	108.5	3,114.0
1959	515.4	908.3	808.2	615.5	495.0	2,511.9	128.5	3,750.9	454.5	112.7	3,183.7
1960	451.7	944.1	787.7	608.1	300.0	2,787.6	143.4	3,839.1	422.8	114.4	3,301.9
1961	642.2	1,060.9	755.6	947.5	300.0	2,899.5	169.4	4,316.4	893.4	117.1	3,305.9

(1) Includes miscellaneous investments, operating parts and supplies and costs applicable to future periods.

(2) Ownership includes $360.3 million par value in each year for 7% cumulative preferred stock and the balance is applicable to common stock.

(3) $270.0 million depreciation reserve, not previously deducted from income, transferred back to ownership.

Plaintiff's Exhibit 31

United States Steel and Carnegie Pension Fund, Trustee
COMBINED PENSION TRUSTS
(Described on page 18)

STATEMENT OF ASSETS

	Dec. 31, 1961	Dec. 31, 1960
Investments, at cost (less than aggregate market or estimated fair value) *(details on page 39)*..	$1,466,069,672	$1,360,593,945
Cash	3,252,629	2,620,641
Accrued interest and other receivables	9,664,531	9,116,326
Contributions receivable from employing companies in subsequent period	8,719,549	5,562,385
Payables	*530,638*	*142,577*
Assets	1,487,175,743	1,377,750,720
Reserves for investments	39,314,000	39,314,000
Assets, less reserves	$1,447,861,743	$1,338,436,720

STATEMENT OF CHANGES DURING THE YEAR

	Year 1961	Year 1960
Balance at beginning of year	$1,338,436,720	$1,228,792,515
Additions		
Receipts from employing companies	85,451,468	87,225,584
Receipts from participating employes	7,092,303	6,796,192
Income from investments	58,648,920	55,516,186
Gain on disposition of investments	8,336,466	3,555,929
	1,497,965,877	1,381,886,406
Deductions		
Pension payments	48,658,153	42,515,844
Refunds to withdrawing employes	1,445,981	933,842
	50,104,134	43,449,686
Balance at end of year	$1,447,861,743	$1,338,436,720

Plaintiff's Exhibit 31

SUMMARY OF INVESTMENTS

	At December 31, 1961	
Securities of United States Steel Corporation and Subsidiaries		
United States Steel Corporation Serial Debentures	$ 19,964,552	
Elgin, Joliet and Eastern Railway Company First Mortgage Series A	2,682,539	
Pittsburgh, Bessemer and Lake Erie Railroad Company First Mortgage Series A	2,306,900	
Union Railroad Company First and Refunding Mortgage Series A	6,462,000	$ 31,415,991
Other bonds, notes and debentures		
United States Government	191,120,978	
Other	458,119,581	649,240,559
Preferred stocks		1,581,389
Common stocks (including bank and insurance company stocks)		584,428,436
Mortgages		18,518,001
Oil, gas and other payments and royalties		47,152,523
Properties owned		133,732,773
Total investments, at cost		$1,466,069,672

Plaintiff's Exhibit 31

To the Board of Directors of
United States Steel and Carnegie Pension Fund:

We have examined the Statement of Assets, Statement of Changes During the Year and Summary of Investments of the combined pension trusts administered by United State Steel and Carnegie Pension Fund as trustee. Our examination was made in accordance with generally accepted auditing standards and included confirmation of the cash and investments owned at December 31, 1961 by certificates obtained from the depositaries and custodians, or by inspection, and such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the foregoing statements present fairly the combined assets of these pension trusts at December 31, 1961 and the changes therein during the year.

(s) Price Waterhouse & Co.

New York 5, N. Y.
February 27, 1962.

Plaintiff's Exhibit 31

UNITED STATES STEEL CORPORATION

DIVISIONS

	President
American Bridge Division, *525 William Penn Place, Pittsburgh 30, Pa.*	J. Donald Rollins
American Steel and Wire Division, *Rockefeller Bldg., Cleveland 13, Ohio*	Van H. Leichliter
Columbia-Geneva Steel Division, *120 Montgomery St., San Francisco 6, Cal.*	J. D. McCall
Consolidated Western Steel Division, *5700 So. Eastern Ave., Los Angeles 22, Cal.*	Charles W. Lee
Michigan Limestone Division, *2650 Guardian Building, Detroit 26, Mich.*	Carl G. Hogberg
National Tube Division, *525 William Penn Place, Pittsburg 30, Pa.*	Henry J. Wallace
Oil Well Supply Division, *2001 North Lamar Street, Dallas 2, Texas*	Michael F. Hazel
Oliver Iron Mining Division, *Wolvin Building, Duluth 2, Minn.*	Christian F. Beukema
Pittsburgh Steamship Division, *Rockefeller Building, Cleveland 13, Ohio*	Charles R. Khoury
Tennessee Coal & Iron Division, *P. O. Box 599, Fairfield, Ala.*	Arthur V. Wiebel
United States Steel Homes Division, *2549 Charlestown Road, New Albany, Ind.*	David H. Boyd
United States Steel Products Division, *1271 Ave. of the Americas, New York 20, N. Y.*	Loring S. Brock
United States Steel Supply Division, *208 So. LaSalle Street, Chicago 4, Ill.*	John H. Moravo
Universal Atlas Cement Division, *100 Park Avenue, New York 17, N. Y.*	Charles B. Baker

Plaintiff's Exhibit 31

PRINCIPAL SUBSIDIARIES

	President
Bessemer and Lake Erie Railroad Company, *Frick Building, Pittsburgh 19, Pa.*	Fred W. Okie
Birmingham Southern Railroad Company, *Parker Building, Fairfield, Ala.*	Claud D. Cotten, Jr.
Caregie Natural Gas Company, *Frick Building, Pittsburg 19, Pa.*	Thomas H. Evans
Duluth, Missabe and Iron Range Railway Co., *Wolvin Building, Duluth 2, Minn.*	Daniel J. Smith
Elgin, Joliet and Eastern Railway Co., *208 So. LaSalle Street, Chicago 4, Ill.*	Thomas D. Bevan
Ohio Barge Line, Inc., *Frick Building, Pittsburgh 19, Pa.*	M. Spalding Toon
Orinoco Mining Company, *Apartado No. 2736, Caracas, Venezuela (Caracas Office)*	Francis Thomas
Pittsburgh & Conneaut Dock Company, *Conneaut, Ohio*	Keith C. Stevens
Quebec Cartier Mining Company, *Port Cartier, Province of Quebec, Canada*	Lloyd J. Severson
Union Railroad Company, *Frick Building, Pittsburgh 19, Pa.*	Fred W. Okie
United States Steel Export Company, *100 Church Street, New York 8, N. Y.*	William S. Morrison

TRANSFER AGENTS—PREFERRED AND COMMON STOCK

Offices of the Corporation
71 Broadway, New York 6. N .Y.
51 Newark Street, Hoboken, N. J.

Continental Illinois National Bank and Trust Company of Chicago
231 South LaSalle Street, Chicago 90, Ill.

REGISTRARS

Preferred Stock

Chemical Bank New York Trust Company, New York 15, N. Y.
The First National Bank of Chicago, Chicago 90, Ill.

Common Stock

Morgan Guaranty Trust Company of New York, New York 15, N. Y.
The First National Bank of Chicago, Chicago 90, Ill.

Plaintiff's Exhibit 31

UNITED STATES STEEL CORPORATION
71 Broadway, New York 6, N. Y.
525 William Penn Place, Pittsburgh 30, Pa.

DIRECTORS

Charles H. Bell	John A. Fuller	Alexander C. Nagle*†
James B. Black	Henry T. Heald*	Joseph P. Spang, Jr.*
Roger M. Blough*†	Clifford F. Hood*	Robert C. Tyson*†
Harllee Branch, Jr.	Arthur A. Houghton, Jr.*	Enders M. Voorhees*†
Philip R. Clarke	C. Jared Ingersoll*	Henry S. Wingate
Cleo F. Craig*†	John M. Meyer, Jr.*†	Leslie B. Worthington*†

*Member of Executive Committee †Member of Finance Committee

Deceased: Cason J. Callaway, April 12, 1961; Harry P. Davison, July 2, 1961; Benjamin F. Fairless, January 1, 1962.

Mr. Heald elected May 1, 1961 and to Executive Committee January 30, 1962. Mr. Branch elected January 11, 1962, and Mr. Wingate, January 30, 1962.

OFFICERS

Roger M. Blough.....*Chairman of Board of Directors*
Leslie B. Worthington.....*President and Chairman of Executive Committee*
Robert C. Tyson.....*Chairman of Finance Committee*
John S. Tennant.....*General Counsel*
William H. Lang.....*Administrative Vice President and Treasurer*
Wilbert A. Walker.....*Admiinstrative Vice Presdent and Comptroller*
Benjamin L. Rawlins.....*Secretary and Assistant General Counsel*

EXECUTIVE VICE PRESIDENTS

R. Conrad Cooper—*Personnel Services*
Edwin H. Gott—*Production*
Stephen M. Jenks—*Engineering and Research*
Norman B. Obbard—*International*
John Pugsley—*Accounting*
Richard F. Sentner—*Commercial*

ADMINISTRATIVE VICE PRESIDENTS

John E. Angle	John H. Elliott	Maxwell D. Millard
Marcus J. Aurelius	Marcus M. Fisher	Austin J. Paddock
James B. Austin	James C. Gray	Edgar B. Speer
Russell M. Braund	R. Heath Larry	C. Burton Vernooy
Marcus M. Chapman	Robert M. Lloyd	Charles H. Williams
Bennett S. Chapple, Jr.	Wilbur L. Lohrentz	

Plaintiff's Exhibit 31

VICE PRESIDENTS
Edward C. Myers—*Assistant to President*

Phelps H. Adams	Randolph W. Hyde	Robert B. O'Connor
Herbert F. Byrne	William P. Jones	James L. Ortner
Robert C. Colbaugh, Jr.	Leverne J. King	Lewis M. Parsons
Joseph B. Copper	James W. Kinnear, Jr.	E. Grosvenor Plowman
Jesse F. Core	Max W. Lightner	J. Warren Shaver
Bay E. Estes, Jr.	Edward C. Logelin	Richard W. Simon
Francis M. Goodwin, Jr.	Oscar T. Marzke	Edwin L. Tindall
Robert W. Graham	Norman C. Michels	John L. Young
Phillips Hawkins	Ralph C. Moffitt	
William L. Hearne	Howard J. Mullin	

Thomas F. Lynch, *Associate General Counsel*
Merrill L. Heald, *Assistant General Solicitor*
Leroy L. Lewis, *General Solicitor*
Merrill Russell, *Assistant General Solicitor*

Bradford B. Smith, *Economist*

PLAINTIFF'S EXHIBIT 104

ANSWERS TO INTERROGATORIES ON BEHALF OF U. S. STEEL HOMES CREDIT CORPORATION.

Affiant, after being duly sworn, states that his name is Richard C. Dyas, that he is Vice President and General Manager of U. S. Steel Homes Credit Corporation and that the following answers to certain interrogatories propounded to U. S. Steel Homes Credit Corporation are true to the best of his information and belief.

5. Separately for each of the years 1960 through 1962 give the following:

a. Each state in which U. S. Steel Homes Credit Corporation loaned money for the purpose of financing the development of real estate or the purchase or sale of United States Steel Homes or component parts for prefabricated homes. For each state give the total dollar volume of loans so made.

For each of the years 1960 through 1962, U. S. Steel Homes Credit Corporation entered into loan commitments with borrowers in the following States:

Alabama (1960, 1961)
Illinois
Indiana
Kentucky
Minnesota (1961)
Missouri
New York (1960)
Ohio
Pennsylvania (1962)
Wisconsin (1960, 1962)
Virgina (1961, 1962)

5. Separately for each of the years 1960 through 1962 give the following:

b. For each such state give the name and address of every person or company to whom loans were made which in the aggregate exceeded $250,000.00.

For each of the years 1960 through 1962, the name and address of every person or company in each such state to whom loan commitments were made which in the aggregate exceeded $250,000, are as follows:

Name of Borrower	Address
Allardt Homes, Inc. (1962)	Muncie, Indiana
Andover Development Corporation (1961)	Park Forest, Illinois
Broyhill Land Corporation (1961)	Arlington, Virginia
M. T. Broyhill & Sons Corporation (1961, 1962)	Arlington, Virginia
Clifford C. Loss, Inc. (1960, 1962)	Toledo, Ohio
Cowan Builders (1960)	Hammond, Indiana
Delaware Home Builders (1960, 1962)	Delaware, Ohio
Dorsey Development Corporation (1960)	Louisville, Kentucky

Name of Borrower	Address
Drakesboro Real Estate & Development Co., Inc. (1961)	Drakesboro, Kentucky
Eagles Company (1962)	Louisville, Kentucky
Fifth Cincinnati Builders, Inc. (1961)	Dayton, Ohio
Fortner Enterprises, Inc. (1960, 1961)	Louisville, Kentucky
Fourteenth Ohio Builders, Inc. (1962)	Dayton, Ohio
Fourth Hoosier Villas, Inc. (1960, 1962)	Dayton, Ohio
Handy Homes, Inc. (1962)	Indianapolis, Indiana
Harrison Homes, Inc. (1961)	Indianapolis, Indiana
Heritage Building Corporation (1961)	Clayton, Missouri
Highland Terrace, Inc. (1960)	Dayton Ohio
Hillsdale Development Corporation, Inc. (1960)	Springfield, Ohio
Hoosier Builders (1960)	New Albany, Indiana
Hoosier Villas, Inc. (1960)	Dayton, Ohio
Hunter Properties, Inc. (1960)	Fort Wayne, Indiana
Keele Construction Company (1962)	Kansas City, Missouri
Lakewood Manor, Inc. (1960)	Huntsville, Alabama
Midland Development Company, Inc. (1960, 1961, 1962)	Kansas City, Missouri
Ninth Meadowdale, Inc. (1960)	Dayton, Ohio
North Cincinnati Builders, Inc. (1960, 1961, 1962)	Dayton, Ohio
North Hills, Inc. (1961)	Mundelein, Illinois

Plaintiff's Exhibit 104

Name of Borrower	Address
Regency Homes, Inc. (1961, 1962)	Kansas City, Missouri
Richland Homes, Inc. (1962)	Ellettsville, Indiana
Sterling Park Development Corporation (1962)	Arlington, Virginia
Stoll-Myers Builders (1960)	Lexington, Kentucky
Superior Homes, Inc. (1961, 1962)	Chicago, Illinois
Terryland, Inc. (1960)	Liverpool, New York
Third Hoosier Villas, Inc. (1960, 1961)	Dayton, Ohio
Thunderbird Homes, Inc. (1962)	Cleveland, Ohio
W. Anthony Torsell, Inc. (1960)	Springfield, Ohio
Towne Realty (1962)	Milwaukee, Wisconsin
Twelfth Ohio Builders, Inc. (1961)	Dayton, Ohio
United Construction Company (1960)	Youngstown, Ohio
Valleydale Builders, Inc. (1960, 1961)	Dayton, Ohio
Valley Hi, Inc. (1960, 1961)	Dayton, Ohio
Willow Dell Builders, Inc. (1960, 1961)	Dayton, Ohio

In accordance with the court's ruling on the objections to Interrogatory Number 7, the material giving rise to the information requested in Interrogatory Number 7, upon reasonable notice to defendant, U. S. Steel Homes Credit Corporation's counsel, Albert F. Reutlinger, will be made available to plaintiff or its attorney for inspection and copying at the New Albany office of U. S. Steel Homes Credit Corporation, 322 Pearl Street, New Albany, Indiana.

With respect to Interrogatory Number 8 and the Court's ruling thereon U. S. Steel Homes Credit Corporation states that it has no form bulletins, form letters or material of

Plaintiff's Exhibit 104

general dissemination which concern themselves with sales of prefabricated homes or component parts thereof as a condition of or prerequisite to the giving of financing by U. S. Steel Homes Credit Corporation.

/s/ Richard C. Dyas

PLAINTIFF'S EXHIBIT 105

United States Steel Homes Division

SHIPMENTS OF HOME PACKAGES

ATTACHMENT TO ANSWER TO INTERROGATORIES 8a, 8b and 8c

	1957		1958		1959		1960		1961		9 Months 1962	
	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount
Alabama	-	$ -	-	$ -	-	$ -	17	$ 64,580	8	$ 30,968	13	$ 54,537
Arkansas	-	-	-	-	-	-	-	-	1	5,329	-	-
California	-	-	1	5,167	-	-	-	-	-	-	-	-
Colorado	-	-	-	-	2	7,727	3	10,291	-	-	-	-
Connecticut	116	464,313	78	252,298	50	197,260	3	11,469	2	8,843	2	9,518
Delaware	-	-	2	7,975	-	-	-	-	1	3,878	1	3,814
Florida	1	1,500	-	-	-	-	-	-	-	-	-	-
Georgia	-	-	1	5,167	-	-	-	-	-	-	-	-
Illinois	316	1,261,759	125	402,374	31	125,024	205	760,128	43	189,604	59	217,765
Indiana	289	1,155,737	135	435,045	167	663,581	184	766,958	150	628,376	124	501,644
Iowa	149	593,132	120	385,902	37	148,684	32	133,597	52	153,184	4	19,766
Kansas	5	19,582	-	-	-	-	55	221,436	80	334,996	93	379,105
Kentucky	39	154,644	10	31,681	7	27,226	41	157,977	113	404,306	63	243,096
Maine	12	49,038	18	57,453	7	27,369	14	65,880	19	81,997	14	63,322
Maryland	9	36,898	7	23,487	3	11,750	5	18,805	7	27,890	8	38,421
Massachusetts	44	174,274	6	17,889	-	-	-	-	3	13,791	-	-
Michigan	37	149,723	36	114,949	11	45,267	7	34,505	11	46,391	4	15,690
Minnesota	3	13,439	10	31,044	-	-	82	266,851	16	60,149	8	32,247
Mississippi	-	-	1	5,167	-	-	-	-	-	-	-	-
Missouri	52	208,507	18	57,567	30	118,049	7	34,301	23	96,085	5	17,711
Montana	1	4,573	1	4,483	7	25,967	1	4,053	2	9,896	-	-
Nebraska	1	6,434	-	-	1	4,066	1	11,810	18	78,235	-	-
New Hampshire	11	43,264	9	27,466	9	37,618	8	31,540	10	53,202	1	4,385
New Jersey	26	102,252	27	92,582	5	19,270	11	73,520	12	53,445	5	22,920
New York	30	120,054	17	55,430	21	85,023	28	134,196	11	56,026	7	33,135
North Dakota	-	-	-	-	-	-	5	34,997	1	3,962	-	-
Ohio	811	3,240,369	381	1,221,436	541	1,641,735	966	3,483,295	659	2,312,492	398	1,284,083
Oklahoma	-	-	-	-	-	-	7	28,851	7	24,853	-	-
Oregon	-	-	4	11,984	-	-	-	-	-	-	-	-
Pennsylvania	141	562,641	138	445,321	32	127,172	50	167,530	58	238,993	33	135,321
South Dakota	-	-	-	-	1	3,921	17	68,651	10	33,089	2	6,845
Tennessee	-	-	-	-	-	-	21	71,130	-	-	-	-
Texas	-	-	1	5,167	-	-	-	-	-	-	-	-
Vermont	-	-	1	5,047	4	14,675	-	-	1	3,905	1	3,764
Virginia	1	3,123	23	74,159	44	176,645	-	-	-	-	136	518,776
West Virginia	60	237,905	33	106,892	28	113,140	22	86,086	20	81,701	3	14,229
Wisconsin	27	107,776	1	3,342	5	18,270	1	3,916	4	16,406	3	14,777

PLAINTIFF'S EXHIBIT 106

Attachment to Answer to
Interrogatories 9c, 9c(1),
and 9c(2)

SALES OF HOME PACKAGES BY UNITED STATES STEEL HOMES DIVISION

TO PURCHASERS IN JEFFERSON COUNTY, KENTUCKY

	1957		1958		1959		1960		1961		Nine Mos. 1962	
	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount
The Eagles Company 4406 Shelbyville Road Louisville, Kentucky	3	$12,630	-	-	-	-	-	-	7	$25,879	43	$167,481
Town & Country Homes 1112 E. Broadway Louisville, Kentucky	10	47,548	2	$12,261	-	-	-	-	4	18,588	5	26,439
The O. K. Company, Inc. 8516 Preston Highway Louisville, Kentucky	-	-	-	-	-	-	3	$10,423	7	29,490	-	-
Fortner Enterprises 4123 South 3rd Street Louisville, Kentucky	-	-	-	-	-	-	4	14,723	55	189,002	13	43,413
A. W. Brent Co. Center Building Louisville, Kentucky	-	-	-	-	-	-	1	3,421	-	-	-	-

PLAINTIFF'S EXHIBIT 107

1201

STATE	YEAR	LOAN COMMITTMENT	SALES OF HOMES
Alabama	1960	$1,567,400	$ 64,580
	1961	8,000	30,968
	1962	-	54,537
Illinois	1960	$ 150,000	$ 760,128
	1961	4,159,700	189,604
	1962	918,825	217,765
Indiana	1960	$1,296,275	$ 766,958
	1961	798,900	628,376
	1962	1,371,893	501,644
Kentucky	1960	$2,705,655	$ 157,977
	1961	1,222,190	404,306
	1962	928,165	243,096
Minnesota	1960	$ -	$ 266,851
	1961	22,000	60,149
	1962	-	32,247
Missouri	1960	$1,786,000	$ 34,301
	1961	2,759,642	96,085
	1962	2,309,165	17,711
New York	1960	$ 800,000	134,196
	1961	-	56,026
	1962	-	33,135
Ohio	1960	$14,960,475	$3,483,295
	1961	8,519,180	2,312,492
	1962	5,664,638	1,284,083
Pennsylvania	1960	$ -	$ 167,530
	1961	-	238,993
	1962	174,270	135,321
Wisconsin	1960	$ 160,000	$ 3,916
	1961	-	16,406
	1962	600,000	14,777
Virginia	1960	$ -	$ -
	1961	1,875,000	-
	1962	7,316,588	518,776

PLAINTIFF'S EXHIBIT 1-BB

[LETTERHEAD OF UNITED STATES STEEL HOMES]

June 18, 1962

To: S. J. Mack
From: C. L. Schultz
Subject: Fortner Enterprises

The writer visited the above dealer's project this date per your request relative to difficulty in installing wood kitchen cabinets on steel interior partition walls. The problem is simply this: the small 4S molly bolts are of sufficient size to install through the thin veener backs in the Scheirich cabinets; however the dealer feels that the thin veneer is not sturdy enough to support the cabinet properly and wishes to secure the cabinets to the wall through the heavier cabinet frame at the top and bottom. Therefore, a longer molly screw will be required. Suggest Engineering investigate and advise.

They also had a rejection by FHA on a special #710 plan (formerly B-23 porch model) because of no metal flashing installed between the garage roof and the house gable filled. It was my understanding from Earl Lee that no flashing had been included with the 710. After checking the shipping orders it appeared that flashing had been supplied. Called back and talked with Earl Smith who said that there was narrow flashing with the house but his roofer felt that it was not acceptable and didn't use it. Since we have increased the size of the metal flashing this problem should be resolved in the future and no action required.

PLAINTIFF'S EXHIBIT 2-C

U. S. STEEL HOMES CREDIT CORPORATION

Meeting of Executive Committee held at New York, N. Y. on February 19, 1954 at 11:30 A. M.

There were present the following members of the Committee:

H. E. Isham,
W. H. Lang,
R. C. Tyson,

constituting a quorum of the Committee, and

C. B. Vernooy, Comptroller,
B. L. Rawlins, Secretary.

In the absence of the Chairman, the President, W. H. Lang, acted as Chairman of the meeting.

Servicing Mortgages.

After discussion, on motion unanimously carried, it was determined that the officers should investigate the feasibility of the corporation itself servicing the mortgages which will be involved in the first projects of the corporation and to arrange to handle such servicing if feasible; failing that, to negotiate with the local servicing agencies in Louisville, Kentucky, to obtain an option on the services of such agencies for the servicing of mortgages which might be taken in the New Albany, Indiana, territory, and if such arrangements cannot be made, to bring together the local servicing agencies and the prospective purchaser or purchasers of mortgages on homes in that area so that they may make their own arrangements with respect to servicing of mortgages.

Construction Financing.

The Chairman recommended that the corporation offer construction financing to dealer-builders in connection with

any project where it is proposed to arrange the mortgage financing of the sale of completed homes, but pointed out that the arrangements relating to the mortgage financing of the completed homes should not in any sense be made contingent upon the dealer financing the construction of the homes through the corporation. On motion unanimously carried, this recommendation was approved.

Issuing Additional Capital Stock and Establishing Lines of Credit.

The Chairman stated that certain projects were in contemplation which, if concluded, would require the use of substantial funds in construction financing. He stated that the corporation should have a line of credit in an amount of from $3,000,000 to $5,000,000 and pointed out that the establishment of such line of credit would require an increase in the paid-in capital.

After discussion, on motion unanimously carried, the officers were authorized to request United States Steel Corporation to pay in at this time an additional $400,000 against its subscription for 10,000 shares of the capital stock of this corporation with certificate for an additional 4,000 shares of the capital stock of this corporation being issued upon receipt of such payment and the officers were also authorized, following receipt of such additional capital, to establish lines of credit of from $3,000,000 to $5,000,000, with such lines to be developed locally coincidentally as required through correspondents of New York Banks or otherwise.

Approval of Projects.

After discussion, on motion unanimously carried, the officers of the corporation were authorized to proceed with the negotiation of any project involving mortgage or construction financing upon the approval by any three members of the Executive Committee of this corporation of a state-

ment outlining the project, or upon action by the Executive Committee or the Board of Directors at a meeting of such Committee or of such Board.

Adjournment.

On motion, unanimously carried, the meeting adjourned.

(s) B. L. Rawlins
Secretary

PLAINTIFF'S EXHIBIT 2-D

U. S. STEEL HOMES CREDIT CORPORATION
DIRECTORS' MEETING

December 16, 1958

Approval of Program for Financial Transactions

"A report was made on the financial position of the corporation and on its loan and mortgage transactions.

Also, there was presented a report on proposed operations in 1959 of United States Steel Homes Division of United States Steel Corporation and a proposed program of certain financial transactions by this corporation in connection with those operations was outlined.

After discussion, on motion, duly seconded, the following resolution was unanimously adopted:

Resolved: That, for the purposes of enabling the United States Steel Homes Division of United States Steel Corporation (1) to attain a minimum distribution of 1,800 units in 1959, and such additional distribution as may be feasible, and (2) to enlist and maintain the support of and assistance of selected dealers in the development and testing of steel components, and when specially requested by the Homes Division,—

A. This corporation, in instances in which its present programs of loans, mortgage commitment issuance,

and mortgage commitment procurement prove inadequate to effectuate the above purposes, extend the following financial assistance to dealers in addition to its present programs:

1. Make loans to or for the benefit of dealers or enter into other forms of transactions designed directly to effectuate the above purposes, without conformity with conventional or conservative patterns but within the bounds of prudent business judgment;

2. Issue commitments for the purchase of FHA-insured and VA-guaranteed mortgages at fixed discount expense, and hold and liquidate mortgages acquired thereunder as promptly as may be practicable with minimum loss, if any, consistent with the limitation of the $33,000,000 revolving fund;

provided,

B. That the United States Steel Homes Division underwrite and guarantee all loss incurred in the liquidation of mortgages acquired under any commitments providing fixed discount expense, to the extent which such loss may exceed the loss which would have been incurred if the commitments had provided fixed discount expense corresponding with that fixed generally by institutional issuers of stand-by commitments, as determined by the Credit Corporation at the time of issuance of the commitment;

and the officers of this corporation be, and hereby they are, authorized to enter into transactions comprehended within this resolution."

PLAINTIFF'S EXHIBIT 10

[LETTERHEAD OF UNITED STATES STEEL HOMES]

March 26, 1962

To: H. R. Black, Vice President-Sales
From: M. R. Moreillon, Sales Representative
Subject: Work on Leigh Steel Folding Doors—Golden Meadows Subdivision

Dealer: Fortner Enterprises
Louisville, Ky.

On 3/22/62 I went to Golden Meadows Subdivision with Mr. F. Howard and his helper Mr. Rickert of Air Control Products for the purpose of making correction to Leigh Steel Folding Closet doors. As previously reported, Mr. Howard was of the opinion that the changing of Guide Pins and the use of heavier guide pin springs would solve the problem of guide pins jumping the track, also the use of a jamb nut on the bottom pivot pin would hold that pin securely and solve the problem of doors loosening enough to cause them to fall.

Our first stop was at the Kentucky State Fairground where Fortner Enterprises is erectig a home for display in the Home Show. Mr. Howard and his helper changed all guide pins and springs in closet doors in that home. They also changed the hand of the doors so that knobs were located on guide panels for smoother operation. To accomplish this it was necessary to exchange 2 right hand P8030-2 (3′ doors) for 2 left hand P8030-2 doors, also 2 right hand P8020 (2′ doors) were exchanged for 2 P8020 left hand doors. I loaded the doors in my station wagon, brought them back to our plant and exchanged them. Doors were operating well in the Show Home after installation. We proceeded on to Golden Meadows from the Fair Ground and started correcting doors there. We worked in Golden

Plaintiff's Exhibit 10

Meadows until 6:00 P.M. on 3/24/62 at which time we had corrected doors in homes on the following lots:

Lot 187—Occupied
" 186—Not occupied—doors installed
" 185—Not occupied— " "
" 196—Not occupied—doors not installed—in sealed cartons
" 195—Not occupied—doors installed—strong springs in doors
" 477—Occupied
" 211—Occupied
" 478—Occupied
" 212—Unoccupied—doors not installed—in sealed cartons
" 209—Unoccupied—doors installed
" 68—Occupied (RH 3′ door replaced in this home —was defective)
" 78—Unoccupied—doors not installed—in sealed cartons
" 82—Unoccupied—doors not installed—in sealed cartons
" 202—Unoccupied—doors installed
" 412—Unoccupied—doors installed
" 176—Occupied—Heavy springs had been installed
" 391—Occupied— " " " " "
" 49—Office—doors installed
" 48—Model Home—doors installed
" 192—Model Home— " "

The above homes are all the ones with the new doors that are in Golden Meadows according to Mr. Earl Smith of the Fortner Organization. We were in each home and made correction by installation of new guide pins and stronger springs. Jamb nuts were installed on bottom pivot

pins. Stronger springs were found in doors as shown above only.

All doors were working without guides jumping from the track in occupied homes and in unoccupied homes where doors had been hung. Doors in sealed cartons were corrected with new guide pins, springs and jamb nuts the same as in homes where doors had been installed.

Mr. Howard cleaned paint from the tracks in practically all homes where doors had been installed which made them operate much quieter. Tracks were lubricated with Simonize car wax.

Although doors all operated satisfactorily without jumping the track, they still seem flimsy and in most cases the top guide runs ahead of the bottom.

Three doors were replaced—one in an occupied home (Lot 68) and two in one of the Model Homes. Broken welds were the cause for change.

I do not know if the work we did on doors will completely solve the problem—only time will tell but I am of the opinion that the doors border dangerously on the flimsy side and will cause trouble unless very careful installation and adjustment is made.

Copies—Stanley Mack, Ed Akers & any others you may wish.

PLAINTIFF'S EXHIBIT 11

[LETTERHEAD OF UNITED STATES STEEL HOMES]

3/19/62

To: H. R. Black, Vice President-Sales
From: M. R. Moreillon, Sales Representative
Subject: Malta window problem—Fortner Enterprises

As per your instructions Malta windows in the Golden Meadows Project were inspected this date. The complaint

of windows not closing enough to lock (easily) was found to be correct on some windows. In all cases the windows causing trouble were ones with the old type vinyl sealer strip across the bottom of the single hung window. I checked the windows where Bill Klarer had installed washers under the lock keeper. This method of correction had done a satisfactory job in allowing the window to be locked although it is not the answer to the problem. I checked the most recent shipment to the project and found all windows locking perfectly.

There is a possibility that some of the trouble may be due to racking of window panels in erection which causes windows to get out of square.

PLAINTIFF'S EXHIBIT 12

[LETTERHEAD OF UNITED STATES STEEL HOMES]

March 19, 1962

To: H. R. Black, Vice President-Sales
From: M. R. Moreillon, Sales Representative
Subject: Leigh Steel Folding Door Problems—Fortner Enterprises' Golden Meadows Project

Inspection of Steel Folding Doors in this Project was made this date as you directed. It happened that two representatives of Air Control Products, Mr. Frank Howard and his helper, Mr. Rickert, were at the Plant working on doors and they went to Golden Meadows with me. Mr. Paul Grayson, Sales Representative for the area, was also with us when we checked the door problems.

We went to the Model B-1 Home being used for an office first. There was no one there but the door was unlocked so we went in and checked the Steel Folding Doors. We found that the Guide Pins in the 3′ doors were jumping out of the top tracks when doors were opened and

closed. Guide Pins were installed in the wrong holes in the door and one top spring was only ½ engaged. The bottom spring was cut off with only about ½ of the spring installed. This was found in one door. All other springs in doors in the home were OK. Bottom track end brackets were found to be reversed in some of the doors and it was in these doors that we found the guide pins in the wrong hole. We later learned that the doors in this home had been installed by Mr. Bob Robinson, Construction Supt. for Fortner. A check of other homes in which the regular door installer had installed doors they were found to be correctly installed.

We went to the Plan 710 (B-23) home and found all 3′ closet doors jumping from the tracks when operated. This is a furnished model home and one in which Mr. Claude Denton installed stronger springs in guide pins to stop guides from jumping from tracks. That solved the problem temporarily but now they were found to be as bad as ever. Mr. Howard and his helper advised that the shape of the plastic cap on guide pins was causing the trouble and they replaced all guide pins on 3′ doors in the home with the new pins that are now being used. This seems to do the job as we could get the new pins to jump the track.

It was noted that the top of doors run ahead of bottoms when doors are closed or are being closed. I called this to Mr. Howard's attention and his answer was that the light gauge metal used in the door caused this I am inclined to agree with him and wonder if this could cause guide pin plastic caps to wear excessively and later start jumping from the track. If knobs were located on guide panels of doors instead of pivot panels the doors would operate smoother and there would be less chance of guides jumping from tracks. Another door problem will be discussed on the following page.

The second problem with doors in the project is that the (bottom) pivot pin will not stay in adjustment in that it turns when the door is opened and closed until it eventually lowers the door until the top pivot is no longer engaged and the door falls. The bottom pivot pin is held with a pile nut (stamped Metal) and is not able to hold the threaded pivot from turning. Paul Grayson was present when doors were corrected about a week ago by use of a lock washer and jamb nut on the pile nut. Mr. Earl Lee, of the Fortner organization, informed us today that the above correction worked OK and that there had been no complaint since the doors have been corrected. Mr. Frank Howard agreed that the pile nut now used on the pivot pin is frequently incapable of holding the pin securely and that the use of a jamb nut is a satisfactory solution to the problem. I would suggest that this problem be taken up with the manufacturer and if possible get him to correct the problem instead of waiting for a door to fall on an owner's head and then having our Dealers have to make the pivot pin secure.

PLAINTIFF'S EXHIBIT 16

June 5, 1961

Mr. David H. Boyd, President
Harry R. Black, Vice President-Sales
Financing Request—Fortner Enterprises, Inc.

The attached request for Fortner Enterprises, Inc. should allow us to achieve additional shipments into the Louisville area during this construction season. Mr. Day's report is complete and provides adequate information for our consideration. The loan request is actually to pay off a mortgage on the improved lots and to acquire additional working capital as needed by the Fortner operation.

Plaintiff's Exhibit 16

As I have informed you in the past, Fortner Enterprises expended large amounts of money in advertising and promoting the project. As a matter of fact, they did one of the outstanding promotional jobs that I have seen in the past year. The market in the Louisville area has responded well to their promotion; and although delays were encountered due to bad weather, the program is now rolling, and we have accomplished in excess of 40 sales to date.

The loan on the improved lots as presented will not only assist him in this capital requirements, but should provide additional immediate funds because of the improved condition of the lots.

It is the recommendation of the Sales Department that the Credit Corporation meet with the principals of Fortner Enterprises, Inc. and negotiate this request.

HRB/df
Attachment
Distribution: D. H. Boyd (3)
W. L. Rollins
S. J. Mack√
Andrew Cowart
N. G. Day

PLAINTIFF'S EXHIBIT 17

May 29, 1961

Mr. Harry R. Black
N. G. Day
Financing Request—Fortner Enterprises, Inc.
Dealer and Borrower:

The subject dealer, operating in Louisville, Kentucky, is a recently franchised dealer who is presently working with the Credit Corporation under a land development and construction loan agreement. Models and a sales program

Plaintiff's Exhibit 17

were opened in March, and to date the dealer reports over 40 firm sales, with several buyers having been approved and others in process. Production houses are now being shipped.

The dealer recently re-acquired an additional group of lots in Golden Meadows Subdivision and has six of our homes sold in this area even though no effort has been made in that direction.

Paul Grayson and I met with the dealer on May 19, to discuss requirements on this group of lots.

Project:

The lots are located within Golden Meadows Subdivision, a short distance from Fortner's existing program. They are fully developed, FHA approved and ready for use.

When the original loan for development and construction was made and closed, these lots were not available and were no longer owned by Iroquois Developers, Inc. or Fortner Enterprises, Inc. They had been sold, on a contract, to Apex Homes, Inc., Herman Miles, President. At that time, it was Mr. Miles' intent to build conventional homes on these lots. Since that time, Mr. Miles has become general superintendent of Fortner Enterprises, Inc., United States Steel Homes project, and did not wish to build homes on his own in competition with Fortner, so on March 17, this year, the contract expired and the lots reverted to Iroquois Developers, Inc. It is now Mr. Fortner's desire to obtain full control of the lots in the name of Fortner Enterprises, Inc. and to build United States Steel Homes on the balance.

A mortgage of approximately $29,000 is held on these lots by a subsidiary of Louisville Mortgage Service. They have made a commitment to release 4 lots and make construction loans on four of the six homes that are sold which will reduce the mortgage to approximately $24,000.

Plaintiff's Exhibit 17

Financing:

In our meeting with Mr. Fortner, he stated that due to serious deays in getting his United States Steel Homes program started, and further delays in starting the sold houses, because of extremely wet weather all spring, and due to the fact that they had gone over their budget for advertising, furnishings, promotional materials, etc., by a considerable amount, he is in somewhat of a bind for capital.

There were originally 36 lots in the subject group, 34 of which were sold to Apex and 2 to another builder, all of which are now available. Four of these being financed for construction of our homes, leaves 32 to be picked up.

Mr. Fortner's request is as follows:

Balance of mortgage on 32 lots.....	$24,000
Additional capital required.....	30,000
Total.....	$54,000

The FHA valuation on the lots in averaging $2,200 and Mr. Fortner suggested this as a release value which is the same as the previous, existing agreement. This would pay off the loan in 24 plus lot releases.

These lots are ready for use. Six sales have been made, 2 of which will apply to the requested loan. This program would give us a very definite added commercial advantage in this market.

I, therefore, recommended approval of this request and respectfully urge your usual expeditious handling and further recomemndations to the Credit Corporation.

/s/ N. G. Day

NGD/df
Enclosure: Copy of contract between Iroquois and Apex.

GOF 8.11-11
Rev. 6-58

USSH FINANCIAL ASSISTANCE REQUEST	☐ PERMANENT, ☐ CONSTRUCTION, ☐ SITE DEVELOPMENT, ☐ LAND ACQUISITION	
Dealer: Fortner Enterprises, Inc.	District Manager: Paul B. Grayson	Date: 5-29-61
Address: 4123 South Third Street	Project Name: Golden Meadows	
City: Louisville, State: Kentucky	Municipality: Valley Station, County: Jefferson, State: Kentucky	

A. PERMANENT MORTGAGE FINANCING REQUESTED - (FHA only, unless otherwise indicated)

No. of Cases	Total Amount	Term	Minimum Price Acceptable
	$	yrs.	% of par

DESIRED SOURCE: ☐ USSH Credit Corp. ☐ Other (specify)

Where other sources are requested, Dealer should have had preliminary meeting with correspondent to determine acceptability of program and available terms. Preliminary meeting held: Date

Conditions in local mortgage market (terms, availability, etc.)

B. CONSTRUCTION FINANCING REQUESTED - (See notes 1, 2, and 3 on reverse side)

No. of Lots: 32	Requested ratio: 65 % of sales price	Approximate total amount $: 135,000

C. SITE DEVELOPMENT FINANCING REQUESTED - (See notes 1, 2, and 3 on reverse side)

No. of lots to be developed	Actual cost of this land $	Loan Amount Requested $

TYPE OF IMPROVEMENT FOR ABOVE LOTS ONLY	TOTAL COST ☐ Estimate ☐ Firm Bid	AMOUNT IN PLACE: PAID	AMOUNT IN PLACE: NOT PAID	REMAINING WORK
TOTALS				

If additional development work is needed or has been done which is to be considered in the loan amount but is not located entirely on the above land, give type, cost, status, location in relation to above land, etc.:

D. LAND ACQUISITION FINANCING REQUESTED - (See notes 1, 2, and 3 on reverse side)

No. of Lots: 32 Acres	Actual Cost $: 64,000	Loan Amount Requested $: 54,000

Describe extent of development completed: Completed

PROJECT INFORMATION	Total land available in this location: Lots: 32 Acres:	NUMBER OF LOTS: Covered by this request: 32	Owned	Controlled by Agreement: X

Nature and conditions of Agreement or Encumbrances: Mortgage to Louisville Mortgage Service

SUBDIVISION APPROVAL: All local authorities ☐ Yes ☐ No	Plat recorded for 36 no. of lots	FHA STATUS: Formal Approval ☐ Yes ☐ No	Preliminary Approval Date	Submitted Date

If not fully approved, explain status:

FHA Commitments on Hand:	FHA Commitments Applied for: 0 Date	Sales Contracts on Hand:	Firm Mortgage Commitments on Hand: Number Louisville Mtge Svc Amount

STATUS OF UTILITIES AND DEVELOPMENT: (type, present location, availability, approval, number of lots serviced, etc.)

Streets:	In
Sewerage:	In
Water:	In
Gas:	In
Electricity:	In

18

PLAINTIFF'S EXHIBIT 18

1217

BEST COPY AVAILABLE

Plaintiff's Exhibit 18

1218

Arrangements for Development Work and Financing:

Completed

Arrangements for Construction Financing:

As per request

Cost of Average Lot: $2000 ☐ Estimate ☐ Actual	Valuation of Average Lot: $2200 ☒ Estimate ☐ Actual	Are valuations satisfactory to Dealer? Selling ☐ above ☐ below or ☒ at valuations

USS Homes Offered (type, size, foundation, siding, etc.)	Cost [House and Lot] ☐ Estimate ☐ Actual	Valuations [House and Lot] ☐ Estimate ☐ Actual
Typical 1 Albana brick veneer		
garage, small space	$14,200	$15,000

Major Optional Items		

Sales program to start Started	Shipment to start . At once	Estimate completion of current program 6 mos.

Condition and trend of market, rate of future sales, competitive situation, etc.

Program going well in Golden Meadows. 40 plus sold to date with 6 sold on subject lots. Very competitive in the market. Aggressive advertising. Sales holding up well.

Appraisal and recommendations by Sales Representative:

As per attached request. Approval is recommended.

/s/ P. B. Grayson	/s/ N. G. Day	May 29, 1961
Sales Representative	Residential Sales Manager Manager - Field Sales	Date

NOTES: (for B., C., and D. on reverse side)

1. *Include any supplemental data available: cost breakdown, plats, etc.* Contract
2. *Provide current financial statement(s) of Dealer and affiliates, as appropriate.*
3. *Are personal guarantees possible, if needed?_____. Is additional collateral available?_____.*
   Nature and value _____

(8)

PLAINTIFF'S EXHIBIT 26

GOLDEN MEADOWS PRICE LIST

Model No.	Sales Price	Down Payment	Mortgage Loan	Escrow	Monthly Payment
*L					
B-1 Slab	$11,400.00	$350.00	$11,050.00	$49.58	$ 78.31
B-1 Crawl	11,975.00	375.00	11,600.00	53.45	82.95
B-1 Basement	13,150.00	400.00	12,750.00	56.28	91.00
666 T					
B-11 Slab	$12,390.00	$390.00	$12,000.00	$53.62	$ 85.98
B-11 Crawl	12,990.00	390.00	12,600.00	56.32	89.90
B-11 Basement	14,190.00	400.00	13,700.00	59.59	97.00
B-111 Slab	$13,200.00	$400.00	$12,800.00	$56.40	$ 91.18
B-111 Crawl	13,480.00	430.00	13,050.00	56.60	92.82
B-111 Basement	14,675.00	525.00	14,150.00	61.33	100.00
B-23 Slab	$12,945.00	$395.00	$12,550.00	$56.30	$ 88.60
B-23 Crawl	13,190.00	440.00	12,750.00	56.38	89.98
B-23 Basement	14,395.00	495.00	13,900.00	59.65	98.62
B-144 Slab	$15,250.00	$650.00	$14,600.00	$63.44	$103.28
B-144 Crawl	15,490.00	690.00	14,800.00	63.53	104.65
B-144 Basement	16,800.00	800.00	16,000.00	66.69	112.60

*State & County taxes estimated. *Above prices include closing cost.

ALTERNATES:

G.E. Mark 27 Oven and Range	$ 250.00
5142 CT duct free range hood	50.00
12 x 16 Patio incl. wall painted	225.00
Bedford Stone in lieu of brick	200.00
Decorative Bath Ceiling w/light	75.00
Post yard lantern	45.00
Vanity 24"	75.00
Vanity 36"	90.00

G.E. APPLIANCES:

T.B. 364V Refrigerator	$ 376.00
TC464V "	508.00
WA1050V Washer	327.00
DA1020V Dryer & Plug	296.00
WD860V WD Comb	434.00

Hard-Top Driveways, Black Top or Concrete may be quoted.

PLAINTIFF'S EXHIBIT 27

ESTIMATED COSTS
U. S. STEEL HOMES
FORTNER ENTERPRISES, INC.

	Slab				
	B-1	B-11	B-23	B-111	B-144
Basic House					
Engineering	$ 40.00	$ 40.00	$ 40.00	$ 40.00	$ 40.00
F H A Appraisal	25.00	25.00	25.00	25.00	25.00
Permit and water meter	88.50	91.25	92.00	91.25	94.25
Concrete work	850.00	1,000.00	1,131.00	1,000.00	1,250.00
Ground treatment	35.00	46.00	49.00	46.00	55.00
Package house (including tax and freight)	3,098.90	3,475.00	3,823.59	3,589.31	4,543.03
Electrical	203.00	217.00	217.00	217.00	231.00
Heating	243.00	261.00	344.00	354.50	396.00
Plumbing	950.00	950.00	950.00	1,350.00	1,350.00
Carpenter, painting, floor, etc.	541.00	594.50	594.50	594.50	803.50
Drywall	176.00	209.00	209.00	209.00	249.00
Lumber	27.50	40.99	42.99	40.99	81.75
Floor covering	185.00	185.00	205.50	185.00	247.00
Ceramic tile—wall and for floor	85.00	85.00	85.00	85.00	170.00
Gutters, downspouts and roofing	69.00	91.40	95.40	91.40	137.80
Masonry	553.00	663.00	663.00	663.00	809.00
Finished grade, shrubs, trees, seed	72.00	72.00	72.00	72.00	72.00
Sod	100.00	100.00	100.00	100.00	100.00
Driveway	50.00	45.00	45.00	45.00	45.00
Overhead and liability insurance	40.00	40.00	40.00	40.00	40.00
Supervision fee	300.00	400.00	400.00	400.00	400.00
Stamps, deed and release	25.00	25.00	25.00	25.00	25.00
Accounting fee	34.00	34.00	34.00	34.00	34.00
Totals	$ 7,790.90	$ 8,690.74	$ 9,282.98	$ 9,297.95	$11,198.33
Other Costs					
Lot	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00
Commission	300.00	300.00	300.00	300.00	300.00
Discount	300.00	350.00	350.00	350.00	400.00
Interest (Estimated)	300.00	300.00	300.00	300.00	300.00
Total Estimated Costs	$10,690.90	$11,640.74	$12,232.98	$12,247.95	$14,198.33

Plaintiff's Exhibit 27

Optional Extras (See separate schedule)
Basement
Porch
Patio
Ornamental Iron Front
English Elevation—add $ 35.00

ESTIMATED COSTS
U. S. STEEL HOMES
FORTNER ENTERPRISES, INC.

	Crawl				
	B-1	B-11	B-23	B-111	B-144
Basic House					
Engineering	$ 40.00	$ 40.00	$ 40.00	$ 40.00	$ 40.00
F H A Appraisal	25.00	25.00	25.00	25.00	25.00
Permit and water meter	88.50	91.25	92.00	91.25	94.25
Concrete work	600.00	725.00	742.00	725.00	760.00
Ground treatment	.00	.00	.00	.00	.00
Package house (including tax and freight)	3,104.56	3,470.43	3,857.59	3,626.21	4,560.03
Electrical	203.00	217.00	217.00	217.00	231.00
Heating	318.00	318.00	318.00	328.50	362.25
Plumbing	950.00	950.00	950.00	1,350.00	1,350.00
Carpenter, painting, floor, etc.	778.50	818.50	818.50	818.50	1,103.50
Drywall	176.00	209.00	209.00	209.00	249.00
Lumber	507.39	517.39	616.49	517.39	762.55
Floor covering	55.00	56.00	37.00	56.00	70.00
Ceramic tile—wall and floor	85.00	137.25	143.00	137.25	292.00
Gutters, downspouts and roofing	69.00	91.40	95.40	91.40	137.80
Masonry	600.00	700.00	700.00	700.00	900.00
Finished grade, shrubs, trees, seed	72.00	72.00	72.00	72.00	72.00
Sod	100.00	100.00	100.00	100.00	100.00
Driveway	50.00	45.00	45.00	45.00	45.00
Overhead and liability insurance	40.00	40.00	40.00	40.00	40.00
Supervision fee	400.00	400.00	400.00	400.00	400.00
Stamps, deed and release	25.00	25.00	25.00	25.00	25.00
Accounting fee	34.00	34.00	34.00	34.00	34.00
Totals	$ 8,320.95	$ 9,082.22	$ 9,576.98	$ 9,648.50	$11,653.38

Plaintiff's Exhibit 27

	Crawl				
	B-1	B-11	B-23	B-111	B-144
Other Costs					
Lot	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00
Commission	300.00	300.00	300.00	300.00	300.00
Discount	300.00	350.00	350.00	350.00	400.00
Interest (Estimated)	300.00	300.00	300.00	300.00	300.00
Total Estimated Costs	$11,220.95	$12,032.22	$12,526.98	$12,598.50	$14,653.38
Optional Extras (See separate schedule)					
Basement	$ 971.44	$ 1,060.92	$ 1,110.00	$ 1,081.75	$ 1,203.25
Porch					
Patio					
Ornamental Iron Front					
English Elevation—add	$ 35.00				

ESTIMATE COSTS
OPTIONAL EXTRAS—U. S. STEEL HOMES
FORTNER ENTERPRISES, INC.

	B-1	B-11	B-23	B-111	B-144
Basement					
Concrete	$ 630.40	$ 689.40	$ 734.40	$ 689.40	$ 772.40
Plumbing	95.00	95.00	95.00	95.00	95.00
Heating	25.00	25.00	25.00	25.00	25.00
Electrical	12.00	12.00	12.00	12.00	12.00
Lumber	76.60	76.60	76.60	76.60	76.60
Excavating and rough grade	135.00	135.00	135.00	135.00	135.00
Carpenter work and painting	50.00	50.00	50.00	50.00	50.00
Package	(54.56)	(24.83)	(20.00)	(4.00)	34.00
Permit	2.00	2.75	2.00	2.75	3.25
Total Costs	$ 971.44	$ 1,060.92	$ 1,110.00	$ 1,081.75	$ 1,203.25
Porch					
Lumber	$ 116.87				
Concrete	42.00				
Carpenter labor and painting	65.00				
Roofing and gutter	16.40				
Columns	85.49				
Total Costs	$ 325.76				

Plaintiff's Exhibit 27

	B-1	B-11	B-23	B-111	B-144
Patio					
Concrete	$ 133.20				
Painting	40.00				
Total Costs	$ 173.20				
Ornamental Iron Front—B-11					
Columns	$ 137.50				
Installing and painting	35.00				
Total Costs	$ 172.50				

PLAINTIFF'S EXHIBIT 40

June 29, 1961

Mr. W. H. Lang, President and Treasurer
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Fortner Enterprises, Inc.

Dear Mr. Lang:

Under date of June 5, I received in this office the attached recommendation from Harry R. Black, Vice President-Sales, covering an additional financing request under the special program for the subject dealer.

Since I recognized, after a review of the recommendation, that the request was in effect an extension of, and directly related to, the existing program which this dealer is now following, I suggested to R. C. Dyas that a preliminary discussion be held with the dealer pending the processing of any formal action. This discussion was held on June 20 by W. L. Rollins, and a copy of Mr. Rollins' report was sent to this office.

Subsequent to its receipt, I have discussed the subject more fully with Harry Black, and despite the liberal nature

Plaintiff's Exhibit 40

of the request and proposal, it is his judgment that this additional financing provides an important commercial benefit to us in the Louisville area. He has indicated to me that the dealer is earning a profit on the sale of the product, and has further stated that the dealer has in excess of thirty-five sales ahead. Assuming that these can be closed this year, they should be sufficient to permit the dealer to liquidate his 1961 indebtedness on schedule.

Control will continue to be exercised over the dealer's operations in order to prevent the possibility of speculative building.

Our Treasury Department indicates that dealings thus far have been satisfactory.

Consequently, it is recommended that consideration be given to further negotiations with Mr. Fortner so that a continuing program may be provided.

Yours very truly,

(s) DHB
President

Enc.
CC: R. C. Dyas
H. R. Black
W. L. Lieber

PLAINTIFF'S EXHIBIT 41

June 13, 1961

Mr. R. C. Dyas
Vice President and General Manager
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Dear Dick:

Under date of June 5 Harry Black forwarded to me, with copy for Bill Rollins, a memorandum concerning Fortner Enterprises, Inc.

It was the intention of the Sales Department to consider the contents of that memorandum as a request for special financing. In a sense it is, but I believe it relates largely to the existing financing situation with this dealer, and it may well be that a discussion with Mr. Fortner prior to processing any formalized request in this case would be in order.

Indications thus far are that Mr. Fortner has done a better than satisfactory job of introducing United States Steel Homes' product in his Louisville subdivision. It is apparent that he has spent considerable time, effort and money in promotional activity, but he does not yet have sufficient houses built and closed to provide for a normal turnover of money to meet the costs which he has thus far incurred.

I would appreciate it if you would review the problem with him.

Yours very truly,

(s) DHB
President

Copy to New Albany Office
CC: H. R. Black

PLAINTIFF'S EXHIBIT 42

September 22, 1960

W. L. Rollins, Asst. General Manager—Credit Corporation
H. R. Black, General Manager-Sales
Fortner Enterprises, Inc.

Dear Bill:

Attached is a resubmission of the original request on behalf of Fortner Enterprises, Inc., Louisville, Kentucky. I believe the attached memorandum by Mr. Day and the letter by Mr. Fortner clearly explains the situation as of this date.

Although this was in the category of special financing I have mentioned it to Mr. Boyd and whereas we are simply requesting a reactivation of an original commitment by the Credit Corporation which had been recommended by Mr. Boyd and others concerned, it is hoped that the Credit Corporation is in a position to make a direct contact.

Maybe the time element in this program has worked in our favor since we now have commitments in hand covering the 31 lots in question and if a financing situation can be consummated this would appear to be our fastest entry into the fall market in Louisville and possibly winter and spring building.

I realize that you desire to have Dick review this program with you once again and if it is possible we hope this can be accomplished during the week of September 26. I will be in New Albany on September 28 and 29 and if I can be of any help I will be happy to meet with you and Dick and Fortner, if necessary.

Thanks for your consideration in this matter.

HRB/mlp
cc: W. L. Lieber
D. H. Boyd

PLAINTIFF'S EXHIBIT 43

Sept. 19, 1960

Mr. H. R. Black—General Manager-Sales
N. G. Day—Manager-Field Sales
Fortner Enterprises, Inc—Special Financing

On December 22, 1959, I submitted a financing request to you on behalf of Fortner Enterprises, Inc., Louisville, Kentucky, covering 186 lots in Golden Meadows Subdivision. At that time the land in question was owned by a corporation known as Iroquois Development, Inc. with ownership held equally between Mr. A. B. Fortner, Jr. and Mr. William RoBards. Mr. RoBards had agreed to sell his interest to Mr. Fortner and an agreement with the Credit Corporation was reached on that basis.

Models were selected, costs established and submissions were made to FHA for model homes for which satisfactory commitments were eventually received.

It appeared that the program was ready to go, then Mr. RoBards decided that it looked too good for him to relinquish his interest. This caused considerable delay and the agreement had to be extended and eventually allowed to expire.

Since they were at an impasse, Mr. Fortner decided to sell his interest to Mr. RoBards, subject to Mr. RoBards' ability to obtain the same financing arrangements from the Credit Corporation. As you know, our Treasury Department investigated and found that they could not recommend Mr. RoBards for financing.

Since that time I have met with both principals and Mr. RoBards has now definitely agreed to sell his interest to Mr. Fortner and step out of the "deal" entirely.

Therefore, in a pursuant meeting with Mr. Fortner, he has stated that it is his desire to reinstate the original

Plaintiff's Exhibit 43

request and agreement, and if approved, proceed at once on construction of models and opening of a sales program.

You will recall that there are 31 lots completely developed and ready to use, with 155 to be developed. It is strongly felt that the 31 homes can be sold and shipped in 1960 with the 155 for a 1961 program. This will still give us our fastest entry into the Louisville market this year.

I have met and discussed this program with Mr. Fortner on several occasions and am convinced of his ability, enthusiasm and sincerity. He has the building organization, sales and promotion people, and financing know-how to make this program successful.

I respectfully request your earliest consideration of his request and your recommendations to the Credit Corporation.

(s) N. G. Day
Manager-Field Sales

NGD/df

PLAINTIFF'S EXHIBIT 46

September 19, 1960

Mr. Neil G. Day
Manager-Field Sales
United States Steel Homes, Div.
Charlestown Road
New Albany, Indiana

Dear Mr. Day:

As per your suggestion, I am very happy to bring you up to date on the status of Golden Meadows Subdivision, and perhaps fill you in on what has transpired, since the negotiation of our first agreement, to cause what must have seemed to be unnecessary delays.

As you know, the subject subdivision has been owned by Iroquois Developers, Inc., with equal shares held by Mr.

Plaintiff's Exhibit 46

William RoBards and myself. Originally, Mr. RoBards agreed to sell all of his interest in Iroquois to Fortner Enterprises, Inc., which company is totally owned by me.

At the time I requested financial assistance in purchasing Mr. RoBards' interest and developing the lots, there was no question as to Mr. RoBards intent. Then, for some reason, he suddenly refused to sell. I did not and do not feel that the two of us together could successfully launch and carry out a building program. So when Mr. RoBards flatly refused to sell, I had but one choice and that was to offer to sell my interest to him. This he agreed to do if he could obtain financing from your Credit Corporation.

For reasons best known to yourselves, your Company has rejected his request. So once again, we are at a standstill.

After several discussions with Mr. RoBards, he has finally and definitely agreed to sell his interest on the original basis agreed upon and to conduct his operations elsewhere.

I realize that you, Mr. Black and your Credit Corporation must feel, by now, that we can't make up our minds and that we don't know what we want to do. This, I assure you, has never been the case with me.

After visiting your plant and viewing your 1961 models, I am more convinced than ever that we can develop a very successful and mutually profitable program in Golden Meadows.

We have 31 lots, fully developed, with FHA Commitments in hand on your models. We would plan a very extensive advertising and promotion campaign to get the program started as well as a continuing campaign throughout the year. Our builder, Mr. Miles, who is thoroughly experienced in tract building, has the organization for volume production and is also ready to start when we give him the go ahead.

Plaintiff's Exhibit 46

I, therefore, request that you reactivate my original request on the same basis as was finally agreed upon with your Credit Corporation and do whatever you can to expedite it. We have everything else ready to go.

Let me add my personal thanks to you, Paul, Mr. Black and the Credit Corporation for your patience and cooperation during the past months, and we certainly look forward to a long and profitable relationship.

Yours very truly,

A. B. Fortner,
President

ABF:rs
Copy to:
Mr. Paul Grayson

PLAINTIFF'S EXHIBIT 51

January 7, 1960

Re: Fortner Enterprises
Louisville, Kentucky

On January 6, 1960, a meeting was held with Mr. A. B. Fortner, Jr., attended by Messrs. Ray, Grayson and Cowart of the Homes Division, and Dyas and Rollins of the Credit Corporation, for the purpose of discussing the financial request which was the subject of Mr. Boyd's letter of December 30, 1959.

At such meeting it developed that Mr. Fortner had completely changed his proposal as originally made to the extent that he desires a loan commitment covering the entire project of 155 undeveloped lots and approximately 31 fully developed lots. Mr. Fortner indicated that the only way he would proceed in this undertaking would be on the following basis:

Plaintiff's Exhibit 51

1. Financing for the acquisition by Fortner Enterprises from Iroquois Development Corp., of 155 undeveloped lots at a cost of $1,100 per lot, or $170,500, with Fortner's equity to be the 31 fully developed lots at $2,000 per lot, or $62,000.
2. Financing for the development of the 155 lots at $900 per lot, or $139,500. The initial development to be undertaken on 16 lots, at a cost of $14,400 which, together with the 31 improved lots will provide Fortner with 47 fully improved lots. When sales are in hand on one-half of the improved lots, development can be undertaken on the 139 remaining undeveloped lots.
3. Construction financing on the total of 186 lots aggregating approximately $1,400,000, to be disbursed in stages as construction progresses and as homes are completed for sale.
4. A "ride the FHA market" take-out commitment on the 186 lots, amounting to approximately $2,000,000.

The land in question is located in an existing subdivision, Golden Meadows, where some 290 houses have been completed to date. The property was acquired by Iroquois Development Corp., five years ago (after having been optioned three years previously) at a cost of $1,100 per acre as farm land. There can, of course, be no question as to the appreciation in land values after the installation of off-site utilities and the conversion of the tract from raw land to an existing subdivision of several hundred houses.

Should it be decided to proceed on the basis requested by Mr. Fortner, it would be contingent upon a prior determination by him that our house can be profitably built and the receipt of satisfactory financial statement of Fortner Enterprises.

W. L. Rollins
District Representative

PLAINTIFF'S EXHIBIT 55

[LETTERHEAD OF UNITED STATES STEEL HOMES]

Inter-Office Memorandum

March 3, 1960

To: Mr. H. R. Black
From: Mr. D. H. Boyd
Subject: Zettwoch-Fortner Financial Assistance

Dick Dyas called me today, indicating that negotiations with Mr. Fortner had reached a point where he (Fortner) was interested only in approximately the following program:

> Fortner to contribute 31 completely developed lots, U. S. Steel Homes Credit Corporation to provide money to buy 155 undeveloped lots and lend development money to immediately develop 16 out of this 155.
> Upon attaining 50 per cent prior sales of the 47 developed lots, the Credit Corporation would then be obligated to furnish development money for the balance of the entire plot at one time.

In discussing the matter with Bill Lang, Dick advises that Bill would like some assurance from us that if Fortner walks away from the program, leaving a group of developed lots, we will undertake through some other dealer to complete erection and sale of U. S. Steel homes on the property, in order that the Credit Corporation will not be left with an isolated group of developed lots in this instance. Feeling that you had some confidence in both Fortner's enthusiasm to do this job and also that another dealer could be induced to pick up any balance which might remain, I indicated to Dick that we would be willing to underwrite the deal to that extent. Should Fortner elect to do something

else with the land and desire to pay us off at any time in the process, it would not be necessary to fulfill this commitment.

(s) DHB

PLAINTIFF'S EXHIBIT 66

MEMORANDUM

March 1, 1960

To: Mr. R. C. Dyas
From: Mr. W. L. Rollins
Subject: Fortner Enterprises, Inc.
Louisville, Kentucky

In connection with the proposed loan to the subject company copies of the loan documents to be executed in the closing thereof were forwarded to Mr. Fortner, for his review, with my letter of February 19, 1960.

As a result of a call received from Mr. Fortner on February 26, 1960, a meeting was held today in the office of Mr. Samuel Steinfeld, attended by the following:

Mr. Fortner
Mr. Samuel Steinfeld, Attorney for Mr. Fortner
Mr. Edward Horn, Louisville Mortgage Services
Mr. Paul Grayson, U. S. Steel Homes Division
Mr. Rollins and Mr. Leonard, Credit Corporation

The purpose of such meeting was to review the documents and to answer questions that had arisen in connection therewith at the time same were previously reviewed by Messrs. Fortner, Seinfeld, and Horn.

With the exception of a few minor questions relative to wording contained in the loan Agreement (the changing of which will pose no problem and will in no way affect Credit's position) the gentlemen seemed well satisfied with the documents as written.

Plaintiff's Exhibit 66

The principal question raised, and one which seemed to result in an impasse, is that of the maturity of the loan. As you are aware, the loan provides for financing to assist in the acquisition, development and construction of houses on 186 lots, with the maturity of the Construction Note being 12 months and the Land Note 18 months, which is in accordance with our standard practice. Mr. Fortner's position, supported by both his attorney and Mr. Horn, is that he cannot enter into the proposed loan as written because of the questionable ability to market and construct 186 houses within the 12 months' period as called for under the terms of the agreement. While he proposes to put forth his best efforts to assure the success of the project, he stated he is unwilling to enter into the same unless he can have at least a two year program.

We explored the possibility of reducing the loan by cutting back the number of lots but according to Mr. Fortner this is not possible by reason of the fact that in order to obtain the land he must acquire it all at one time; in view of this fact any attempt to reduce the development and construction to a reasonable number of lots would result in excessive release values being necessary to liquidate the Land Note over the reduced number of lots.

In view of Mr. Fortner's position that the program would not be acceptable unless a two year maturity could be established I informed him that I was in no position to give any indication as to the possibility of obtaining authorization therefor it being our standard policy to restric such financing to a one year program; that the only course I could follow would be to submit his views to management for a policy decision.

CC: Messrs. H. R. Black
P. B. Grayson
W. J. Leonard

PLAINTIFF'S EXHIBIT 67

[LETTERHEAD OF UNITED STATES STEEL HOMES]

Inter-Office Memorandum
July 11, 1960

To: Harry R. Black, General Manager-Sales
From: Neil G. Day, Manager-Field Sales
Subject: Financing Request—Fortner Enterprises, Inc.

Earlier this year the Credit Corporation met with A. B. Fortner, Jr. of Fortner Enterprises, Inc., negotiated a land and construction loan and subsequently drew up an agreement covering 186 lots in Golden Meadows Subdivision, Jefferson County, Kentucky. Execution of this agreement by Mr. Fortner was contingent upon his ability to purchase the interest in this subdivision, of Mr. William Robards. At that time it appeared that this had been arranged.

It later developed that Mr. Robards wanted either to continue as half owner or to purchase the interests of Mr. Fortner, and did not wish to sell his interests.

On Tuesday, July 5, along with Sales Representative Paul Grayson, I met with Mr. Fortner and Mr. Robards at which time they informed us that Mr. Robards was now buying the interests of Mr. Fortner, retaining the name Fortner Enterprises, Inc., and requesting the same financing arrangments originally negotiated with Mr. Fortner. The principal change in the program is that now Mr. Robards will be President and sole owner of Fortner Enterprises, Inc., in place of Mr. Fortner thus requiring this new request.

Dealer and Borrower:

Mr. William B. Robards as well as being the new President of Fortner Enterprises, Inc., is President and owner of Engineering Services, Inc. a firm of civil engineers and surveyors doing business at 606 W. Jefferson Street, Louis-

ville, Kentucky. Mr. Robards has been and is the engineer on the Golden Meadows Subdivision.

He has been a practicing engineer for 38 years and has been in subdivision development work for nearly all of that time. He developed Valley Village, a subdivision of 800 homes and Valley Gardens with 525 homes, among others. He has been both City and County Engineer. Certainly, Mr. Robards has a vast experience in subdivision planning and development, and is throughly acquainted with FHA procedures.

It is indicated that there will be some improvement in the financial statement of Fortner Enterprises in that the liabilities listed on the previous statement will now be lifted and there will be no encumbrances on the land.

Project:

The project is Golden Meadows which is exactly the same 186 lots on which financing was requested earlier.

Financing:

The financing request is also exactly the same as that requested previously and on which a Loan Agreement was drawn. The borrower requests that the same arrangements be made without exception.

It is my opinion that this program has excellent commercial value to the Homes Division for the following reasons:

1. Thirty-one lots are fully developed and ready for use. Balance are plotted and FHA approved.
2. FHA commitments have been obtained for four models so that these could be built immediately and a program started yet this summer.
3. Mr. Fortner's organization, Zettwoch-Fortner Co., would still handle sales promotion, advertising, processing, etc. They have a wide experience and good reputation in this field.

4. The organization is set up, land ready, model commitments received, and program ready to go upon approval of this request.

I, therefore, request your earliest consideration and recommendations to the Credit Corporation, on this request.

Neil G. Day
Manager-Field Sales

PLAINTIFF'S EXHIBIT 68

[LETTERHEAD OF U. S. STEEL HOMES CREDIT CORPORATION

June 26, 1961

Mr. R. C. Dyas, Vice President
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Dear Mr. Dyas:

Re: Fortner Enterprises, Inc.
Proposed Additional Loan

Reference is made to Mr. Boyd's letter addressed to you under date of June 13, 1961, relative to the request submitted by the subject dealership for financing on approximately thirty-two additional lots in the Golden Meadows Subdivision, in which letter it was requested that the Credit Corporation review with Mr. Fortner his problem prior to any formalized processing of the case.

On June 20, 1961, accompanied by Mr. Grayson of the Homes Division and Mr. Leonard of the Credit Corporation, I met with Mr. Fortner on this matter and attached is a memorandum regarding his request.

There can be no question that the dealer has incurred substantial expenditures of which he has been unable to re-

cover any portion to date. After discussing the matter with Mr. Fortner I can only conclude that a loan on any basis other than that which he has asked for would be unacceptable to him.

I am forwarding copies of this letter and enclosure to Mr. Boyd and Mr. Black so that they will be in a position to discuss the case with you.

Very truly yours,

(s) W. L. Rollins
Assistant General Manager

WLR/df
Encl.
CC: Mr. D. H. Boyd
Mr. H. R. Black

PLAINTIFF'S EXHIBIT 69

MEMORANDUM

June 26, 1961

To: Mr. R. C. Dyas
From: Mr. W. L. Rollins
Subject: Fortner Enterprises, Inc.
Louisville, Kentucky

The captioned dealer was franchised on October 31, 1960, and presently has under development with U. S. Steel houses and with financing provided by the Credit Corporation, Golden Meadows Subdivision, Louisville, Kentucky.

Status of Outstanding Loan

	Authorized	Disbursed	Repaid	Outstanding	Maturity
Land Note #1.....	$ 88,000	$ 84,566	$ 6,600	$ 77,966	12-31-61
Land Note #2.....	231,920	133,718	—	133,718	12-31-62
Construction Note #1.	373,200	123,537	24,612	98,925	12-31-61
Construction Note #2.	1,362,180	—	—	—	12-31-62

The existing loan was made against 187 lots located in Golden Meadows Subdivision, of which number 30 were fully developed and 157 unimproved. Of the Land Notes aggregating $319,920, the amount of $170,500 was disbursed at loan closing to enable Mr. Fortner to buy out the other principal in Iroquois Developers, Inc., which at that time held title to the 187 lots in question and which company, following consumation of the stock purchase, transferred title to the property to our borrower, Fortner Enterprises, Inc.

Borrower reports in excess of 35 sales applicable to lots covered by the loan of which number evidence of 23 approved sales have been furnished to the Credit Corporation. In order to assure liquidation of Land Note #1 by maturity Borrower will have to erect and close approximately 35 houses by December 31, 1961.

Request

Under date of 5-29-61 the subject dealer submitted another financing request to the Homes Division to cover 32 fully developed lots situated in Golden Meadows Subdivision, which lots are presently owned by Iroquois Developers, Inc. At the time of the negotiation and closing of our present loan the 32 lots in question had been contracted for sale by Iroquois to Apex Homes, Inc., for $68,000.00, payable within one year from the date of the contract, March 17, 1960. However, prior to actual consummation of the sale Mr. Herman Miles, president of Apex Homes, Inc., became general superintendent of Fortner Enterprises, Inc., and consequently permitted the contract to expire.

Mr. Fortner has requested a land loan of $54,000 against the 32 improved lots, together with construction financing. Of the $54,000 land portion of the requested loan, approximately $24,000 would be utilized to retire an existing

mortgage on the property, with the balance of $30,000 being requested by Fortner to replenish a portion of the working capital claimed to have been expended in connection with the programming and operation of the U. S. Steel subdivision and which has become frozen due to various delays incurred in placing the program in operation.

The aforementioned request was being processed through the Homes Division under the "special" financing program, however, prior to the formal submission thereof to the Credit Corporation, Mr. Boyd, President of the Homes Division, addressed a letter to you dated June 13, 1961, reading as follows:

> "Under date of June 5 Harry Black forwarded to me, with copy for Bill Rollins, a memorandum concerning Fortner Enterprises, Inc.
>
> "It was the intention of the Sales Department to consider the contents of that memorandum as a request for special financing. In a sense it is, but I believe it relates largely to the existing financing situation with this dealer, and it may well be that a discussion with Mr. Fortner prior to processing any formalized request in this case would be in order.
>
> "Indications thus far are that Mr. Fortner has done a better than satisfactory job of introducing United States Steel Homes' product in his Louisville subdivision. It is apparent that he has spent considerable time, effort and money in promotional activity, but he does not yet have sufficient houses built and closed to provide for a normal turnover of money to meet the costs which he has thus far incurred.
>
> "I would appreciate it if you would review the problem with him."

In compliance therewith I met Mr. Fortner on June 20, 1961, in an effort to determine if there was a more conservative basis upon which we could provide financing on the lots in question and still be of assistance to him. Mr. Fortner's position was that he needed the financing as requested and felt that a loan similar to that which we originally made was justified.

Should a loan be provided as requested the same would be in the total amount of $462,400.00 as follows:

Total Estimated Valuation—$17,000 per lot—32 lots		$544,000.00
Total Maximum Loan—85% of valuation		$462,400.00
Land Note:		
Retire existing mortgage	$24,000	
Working Capital to Borrower	29,688	
Loan Fee	2,312	$ 56,000.00
Construction Note		406,400.00
Total Maximum Loan		$462,400.00

On a per lot basis the loan proceeds would be allocated:

Maximum Estimated Valuation	Maximum Loan (85%)	Allocated to Land Note	Allocated to Construction Note
$17,000	$14,450	$1,750	$12,700

Collateral

A first lien would be offered as security on 32 fully developed building lots. The lots in question are presently carried on the books of Iroquois Developers, Inc., at approximately $41,500 which apparently represents cost.

Estimated FHA lot valuation is at $2,200 per lot or a total valuation of $70,000.

The land portion of the requested loan amounting to $54,000 would result in a loan approximating 130% of cost and 77% of FHA improved lot valuation.

The preposed release value of $2,200 per lot would result in liquidation of the requested loan on closing of 25 lots, or approximately 78% of the total lots involved.

Construction funds would be disbursed on a stage basis on pre-sold houses.

Financial Condition

Attached is unaudited balance sheet of Fortner Enterprises, Inc., as of May 31, 1961.

It will be noted that the statement was prepared by showing only as value of work in process those items of costs which had actually been paid and not including in this asset item any costs covering work which had been completed but which was covered by outstanding payables. I subsequently contacted Mr. Fortner's outside accounting firm and have been advised that as of May 31, 1961, payables due suppliers and subcontractors amounted to $27,845.45 (of which $9,457.60 have now been paid) and that $11,641.23 had been billed by United States Steel Homes Division for house packages.

It is evident that until such time as the subject might realize profits from closings in volume any further working capital must either be provided by Mr. Fortner from additional injection or from the proceeds of the requested loan.

Comments

The improved lots which are the subject of this request are situated in the middle of the initial section of Golden Meadows Subdivision and are surrounded by existing houses which seem to be well maintained. Mr. Fortner reports several sales are available to him on said lots and

he is presently in process of erecting 4 of our houses thereon aided by local financing.

In viewing the subdivision, particularly that portion covered by our existing loan, the dealer has practically completed development of the small section of 17 lots (Section 1-F) which was the initial development phase provided for under our loan so as to test the market, and is making rapid progress with the development work in the adjacent section (Section 1-D) comprising 96 lots.

It appears that he has done a very good job with his models and his sales pricing seems to be below that offered by competitors. This should furnish reasonable assurance of capturing a better than fair share of the available market with the presently unknown factor being, of course, the ability to maintain adequate volume to absorb overhead costs and realize a profit.

As previously indicated herein Mr. Fortner stated that he needed the amount requested over and above that required to retire the existing mortgage to replenish working capital which had been deplored to date due to various delays. In this connection, in our discussion I informed Mr. Fortner that expenditures of this nature are normally borne by all builders and in many instances represents about the only risk capital a builder provides.

I further informed him that I felt that a construction loan on the lots in question with provision for disbursement of sufficient funds to retire the existing mortgage could probably be made but that it was difficult to justify a loan such as he was requesting in view of the substantial "front money" exposure we had incurred in our existing loan. Mr. Fortner took the position that he was entitled to the same consideration on this request as he received on the original loan.

In my opinion the expenditures heretofore made for promotional activities, model furniture, overhead, etc., rep-

resents about the only capital injection made in connection with our existing loan and another 100% loan to enable a recapture of a part of such expenditures is not justified.

However, should it be determined to authorize such a loan, the following terms and conditions are suggested:

1. Evidence of Indebtedness:
   a. Land Note in the principal amount of $56,000, maturing in one year, and bearing interest at the rate of 6% per annum, payable monthly, with provision being made for release of lien of the Land Note upon receipt of payment of $2,200 per lot.
   b. Construction Note in the principal amount of $406,400, maturing in one year and bearing interest at the rate of 6% per annum, payable at house closings.
2. Collateral:

   First lien on 32 fully developed building lots situated in Golden Meadows Subdivision.
3. Disbursements:
   a. Proceeds of Land Note to be disbursed at time of loan closing in payment of Loan Fee, retirement of existing mortgage, and balance to Borrower for working capital purposes.
   b. Proceeds of Construction Note to be advanced in stage disbursements as work progresses on presold houses.
4. Other terms and conditions to be substantially in accordance with standard requirements imposed by the Credit Corporation in loans for land acquisition and construction financing.

BALANCE SHEET

FORTNER ENTERPRISES, INC. (A Kentucky Corporation)
May 31, 1961

ASSETS

CURRENT ASSETS			
Cash in bank			$ 6,271.96
Account receivable			235.55
Inventory—Golden Meadows Subdivision:			
(1) Land costs (191 lots)	$240,500.00		
(1) Land development costs and other costs allocable to land	12,742.30		
(1) Work in process—Model Homes and houses under construction	101,853.93		
Furnishing and decorating—Model Homes	11,970.45	367,066.68	
Deferred expenses:			
Interest—payments on Land Notes No. 1, and No. 2, Golden Meadows Subdivision	$ 5,723.30		
Promotion and advertising costs—Golden Meadows Subdivision	3,221.65		
Other deferred expenses	498.14	9,443.09	
Total Current Assets			$583,017.28
LIABILITIES			
Land and dwellings (Three rental units)			
Net depreciated cost	$ 29,376.01		
Less: first mortgage notes payable	89,230.46	$ 155.55	
Federal National Mortgage Association Stock		734.00	889.55
Total Assets			$383,906.83

Plaintiff's Exhibit 69

LIABILITIES AND CAPITAL

CURRENT LIABILITIES			
First mortgage notes payable:			
(1) U.S. Steel Homes Credit Corporation—Land Note No. 1...		$ 73,600.00	
(1) U.S. Steel Homes Credit Corporation—Land Note No. 2...		107,175.00	
(1) U.S. Steel Homes Credit Corporation — Construction Note No. 1		106,820.82	$287,595.82
Loans payable:			
A. B. Fortner, Jr.....		$ 25,000.00	
Iroquois Developers, Inc.....		23,000.00	48,000.00
Accrued expenses			44.70
Total Current Liabilities.....			$335,640.52
CAPITAL			
Preferred stock outstanding.....		$ 6,000.00	
Common stock outstanding.....		1,000.00	
TOTAL		$ 7,000.00	
Appreciation surplus	$ 62,000.00		
Deficiency in earned surplus.....	20,733.69	41,266.31	48,266.31
Total Liabilities and Capital..			$383,906.83

NOTES: Work in process shown above includes only costs actually paid toward cost of construction of houses at balance sheet date. Any costs due subcontractors, supervisors, etc. at balance sheet date are not reflected herein either as an inventory item or account payable.
The above balance sheet has been prepared from the books and records of Fortner Enterprises, Inc. and is presented without audit or verification.

(1) First mortgage notes are secured by land and improvements in accordance with Loan Agreement and Mortgage Deed dated October 28, 1960, between Fortner Enterprises, Inc. and U. S. Steel Homes Credit Corporation.

NOTE: Appreciation surplus shown above resulted from revaluation of 166 subdivision lots acquired by the company.

PLAINTIFF'S EXHIBIT 71

[LETTERHEAD OF U. S. STEEL HOMES CREDIT CORPORATION]

January 7, 1960

Mr. H. R. Black, General Manager—Sales
United States Steel Homes Division
Charlestown Road
New Albany, Indiana

Dear Mr. Black:

Re: Fortner Enterprises
Louisville, Kentucky

Enclosed herewith for your review is a copy of memorandum covering the main points of the discussion with Mr. Fortner in the meeting of January 6, 1960.

You will note that the program involves substantial changes from that originally proposed by Mr. Fortner and, therefore, if same is acceptable to you on the basis now proposed would you please so indicate on the attached copy of this letter.

Very truly yours,

(s) W. L. Rollins
District Representative

WLR/df

PLAINTIFF'S EXHIBIT 126

July 10, 1962

To: Mr. W. L. Rollins
From: Mr. D. H. Boyd
Subject: Fortner Enterprises

Dick Dyas called me today and after some discussion, he informed me that the following steps would be taken with respect to Fortner's indebtedness:

Plaintiff's Exhibit 126

1. The matter would be turned over to John Bird for handling.

2. A letter of demand for payment would be forwarded to Fortner, accompanied by a copy of the Ernst & Ernst audit recently completed.

At Dick's request, I informed Al Reutlinger of this decision and told him that he would at least be advised when the letter was forwarded to Fortner so that he would be completely up-to-date. Would you please be sure that he is so advised?

CC: R. C. Dyas

PLAINTIFF'S EXHIBIT 127

MEMORANDUM

June 19, 1962

To: Mr. D. H. Boyd
From: R. C. Dyas
Subject: Fortner Enterprises, Inc.
Louisville, Kentucky

1. Ernst & Ernst today reviewed with us their preliminary report on the subject company. The formal report as of May 31 will now be prepared and furnished to us in a day or so. Salient features of the report are as follows:

   a. The Golden Meadows project has made a net profit of some $6,000 since inception. Gross profit on 51 houses sold and closed amounts to slightly more than $1,000 per house, or $51,183.28. Of this amount, about $22,500 is offset by interest on land loans. Other overhead items appear reasonable, excepting an item of $9,000 for "unidentified costs and expenses," which would include all expense of service to home buyers;

Plaintiff's Exhibit 127

   b. The corporation is insolvent by some $10,000, due to losses incurred prior to undertaking Golden Meadows. At the time our first loan was negotiated, this condition was disguised by a $62,000 overvaluation of assets. The insolvency may be cured by capitalization of some or all of the corporation's indebtedness to Iroquois Developers, Inc., $24,000, and to A. B. Fortner, Jr., $11,200;

   c. Circularization of subcontrctors has developed no claims not disclosed by the books, or aged payables. About half of the subcontractors have responded and more responses are expected during the week. No investigation was made of alleged claims by home buyers.

2. In memo to you dated June 11* (copies of which were furnished to us) Mr. Black advised that he had been informed by Mr. Reutlinger that Fortner's attorneys had asked for a copy of the audit report, when completed, and that Mr. Reutlinger "saw no reason why this should not be made available." We see no reason why it should. The cost of this audit will be $1,000 or more and up to date we feel we owe no favors to the dealer. Of course we will furnish copies to you as soon as the report is received, for your own use and information.

3. You will recall that after the meeting with the dealer and its attorneys on June 5 I advised Mr. Reutlinger that "the Credit Corporation would withhold action to enforce payment of its loans for a maximum period of two weeks, provided satisfactory progress is made in the negotiations with the Homes Division." (See memo, Dyas to Lang, 6/8).* The two weeks period has expired and apparently no reasonable progress has been made in negotiations. We believe we should now proceed to

make demand for payment and refer our files to the Legal Division to institute legal action.

CC: Messrs. W. H. Lang
W. L. Rollins
H. R. Black
J. C. Bird

---

*Attached

ERNST & ERNST
Commonwealth Building
Louisville

June 19, 1962

Mr. William L. Rollins,
Assistant General Manager,
U. S. Steel Homes Credit Corporation,
Mutual Trust and Deposit Building,
New Albany, Indiana.

Dear Mr. Rollins:

We are enclosing six copies of preliminary financial statements (without audit) of Fortner Enterprises, Inc. for the period of one year and eleven months from July 1, 1960 through May 31, 1962.

The following comments relate to accompanying financial statements or to the scope of our examination.

1. In connection with our circularization of vendors and sub-contractors of record, we have received replies to approximately 50% of the requests sent. For the replies received, there were no unusual items reported by the vendors or subcontractors nor was there any indication that any of the subcontractors were asserting or intended to assert claims against the Company.
2. The bookkeeper for Cook Lumber Company indicated informally to us that there has been correspondence

relative to claims. However, Mr. Herman Miles declined to give any further information in regard to any claims and stated that he knew of no claims against the Corporation.

3. The amount shown on the balance sheet as construction accounts payable represents all unpaid bills as of May 31, 1962, which we were able to determine by reference to records of the Corporation and by confirmation requests to venders and sub-contractors. It is probable that additional amounts will be disclosed as additional replies are received to our confirmation requests. Generally the unpaid bills represent current charges on the houses under construction.
4. The note payable to Iroquois Development Corporation represents cash advances in 1960 and 1961 aggregating $33,981.65 less a repayment in February, 1961 of $10,000.
5. The advance payable to Mr. A. B. Fortner, Jr. represents principally cash advances from A. B. Fortner, Jr. in late 1960 and early 1961 aggregating $25,000, less cash repayments in late 1961 and early 1962.
6. The undeveloped land (containing an area for 45 lots) is carried at a cost of $750.00 per lot plus a pro-rata part of financing costs amounting to $55.01 per lot.
7. The developed lots (104 lots) are carried at costs of approximately $1,600.00 to $1,800.00 per lot.
8. The houses under construction represents 12 houses either complete or under construction on a contract basis and 11 houses (including models and office) either complete or under construction on a speculation basis.

Plaintiff's Exhibit 127

9. In examination of support for houses under construction, we noted that the invoices from vendors and sub-contractors generally did not contain any approval indicating the receipt of material or approval of work done nor was there generally any receiving reports attached to the invoices. In many cases the invoices did indicate the lot number to which material or labor was supplied and in other cases this was indicated on the invoice by employees of the Corporation. We found no indication during our examination, however, that the invoices examined were not proper charges for materials or services.

If you have any further questions in regard to the financial statements or our examination, please advise.

Yours truly,

(s) L. E. Gardner
Assistant manager.

LEG:ph

Plaintiff's Exhibit 127

PRELIMINARY BALANCE SHEET (WITHOUT AUDIT)
FORTNER ENTERPRISES, INC.
May 31, 1962

ASSETS

Cash:		
In bank		$ 4,364.53
Deposits in transit		6,171.47
		$ 10,536.00
Escrow deposit		2,950.00
Accounts receivable and insurance claims		2,843.16
Real estate and construction in progress (mortgaged)—at cost:		
Undeveloped land—45 lots	$ 36,225.45	
Developed lots—104 lots	182,527.77	
Houses under construction and land cost; (including office and model homes)	194,521.52	
Furniture and furnishings in model homes (no depreciation provided)	13,221.45	426,496.19
Equipment and furniture—less estimated depreciation		1,768.56
Investment—stock in FNMA		2,014.50
Rental property—mortgaged	$ 41,733.56	
Less accumulated depreciation (estimated)	3,471.00	38,262.56
		$484,870.97

LIABILITIES

Mortgage notes payable to U. S. Steel Homes Credit Corporation:	
Land loans	$244,357.60
Construction loans	126,934.60
Other	2,950.00
	$374,242.20

Plaintiff's Exhibit 127

Mortgage notes payable—rental property			38,541.42
Construction accounts payable			39,111.97
Note payable—Iroquois Developers, Inc.			23,981.65
Accrued interest on construction advances			3,982.75
Payroll taxes and other liabilities			204.44
Advances from A. B. Fortner, Jr.			11,200.00
		TOTAL LIABILITIES	$491,264.43
Deficiency in assets:			
Preferred Stock		$ 6,000.00	
Common Stock		1,000.00	
		$ 7,000.00	
Earned-surplus deficit (deduction*):			
Balance at July 1, 1960	$16,174.56*		
Net profit for period from July 1, 1960 through May 31, 1962	2,781.10	13,393.46*	6,393.46*
			$484,870.97

*Denotes red figure.
See note to financial statements.

PRELIMINARY STATEMENT OF OPERATIONS (WITHOUT AUDIT)
FORTNER ENTERPRISES, INC.

Period of one year and eleven months from July 1, 1960 through May 31, 1962

	Year Ended June 30, 1961	Eleven Months Ended May 31, 1962	Total
GOLDEN MEADOWS PROJECT			
Sales of houses (51 houses)	$38,825.00	$624,452.59	$663,277.59
Cost of houses sold:			
Land and construction costs, including sales commissions, closing costs loan, discount, and interest on construction advances	$36,447.42	$581,202.96	$617,650.38
Less utility refunds received	–0–	5,556.07	5,556.07
NET CONSTRUCTION COSTS	$36,447.42	$575,646.89	$612,094.31
	$ 2,377.58	$ 48,805.70	$ 51,183.28

Plaintiff's Exhibit 127

	Year Ended June 30, 1961	Eleven Months Ended May 31, 1962	Total
Expenses:			
Interest expense—Note	$ 7,574.10	$ 14,896.69	$ 22,470.79
Insurance	1,619,17	61.83	1,681.00
Professional services	235.00	1,548.72	1,783.72
Salaries	1,590.00	3,475.00	5,065.00
Advertising	831.00	616.72*	214.28
Heat, light, and power	146.48	1,772.09	1,918.57
Telephone	157.75	388.39	546.14
Office expense	110.06	22.01	132.07
Taxes and licenses	68.64	839.68	908.32
Depreciation—estimated	71.55	200.00	271.55
Dues and subscriptions	10.00	190.00	200.00
Commissions (bonuses)	–0–	800.00	800.00
Unidentified costs and expenses	2,072.26	7,032.45	9,104.71
	$14,486.01	$ 30,610.14	$ 45,096.15
PROFIT OR LOSS*—GOLDEN MEADOWS PROJECT	$12,108.43*	$ 18,195.56	$ 6,087.13
OTHER THAN GOLDEN MEADOWS PROJECT			
Rental income	$ 2,997.00	$ 3,866.00	$ 6,863.00
Dividends received	20.46	28.89	49.35
	$ 3,017.46	$ 3,894.89	$ 6,912.35
Expenses:			
Interest	$ 1,401.10	$ 1,350.00	$ 2,751.10
Insurance	207.50	209.61	417.11
Taxes	308.00	301.18	609.18
Repairs and maintenance	92.14	232.67	324.81
Commissions	177.60	193.44	371.04
Depreciation	1,346.74	1,300.00	2,646.74
Amortization of organization expense	23.40	–0–	23.40
Rent expense and payment in settlement of lease	3,075.00	–0–	3,075.00
	$ 6,631.48	$ 3,586.90	$ 10,218.38
PROFIT OR LOSS* — OTHER THAN GOLDEN MEADOWS PROJECT	$ 3,614.02*	$ 307.99	$ 3,306.03*
NET PROFIT OR LOSS*	$15,722.45*	$ 18,503.55	$ 2,781.10

*Denotes red figure.
See note to financial statements.

Plaintiff's Exhibit 127

NOTE TO FINANCIAL STATEMENTS
(WITHOUT AUDIT)
FORTNER ENTERPRISES, INC.
May 31, 1962

Interest expense shown in the statement of operations (amounting to $22,470.79) represents principally interest on the land loans from U. S. Steel Homes Credit Corporation. On the books, part of this interest has been shown as a deferred charge to be allocated to the cost of the various lots and undeveloped land, but for the purpose of the accompanying statements all such interest and other carrying charges have been shown as an expense.

Interest on construction advances on houses under construction at May 31, 1962 amounted to $3,982.75, and this amount is included in the cost of houses under construction.

PLAINTIFF'S EXHIBIT 128

ERNST & ERNST
COMMONWEALTH BUILDING
LOUISVILLE

June 19, 1962

Mr. William L. Rollins
Assistant General Manager
U. S. Steel Homes Credit Corporation
Mutual Trust and Deposit Building
New Albany, Indiana

Dear Mr. Rollins:

We are enclosing six copies of preliminary financial statements (without audit) of Fortner Enterprises, Inc. for the period of one year and eleven months from July 1, 1960 through May 31, 1962.

The following comments relate to accompanying financial statements or to the scope of our examination.

Plaintiff's Exhibit 128

1. In connection with our circularization of vendors and sub-contractors of record, we have received replies to approximately 50% of the requests sent. For the replies received, there were no unusual items reported by the vendors or sub-contractors nor was there any indication that any of the sub-contractors were asserting or intended to assert claims against the Company.

2. The bookkeeper for Cook Lumber Company indicated informally to us that there has been correspondence relative to claims. However, Mr. Herman Miles declined to give me further information in regard to any claims and stated that he knew of no claims against the Corporation.

3. The amount shown on the balance sheet as construction accounts payable represents all unpaid bills as of May 31, 1962, which we were able to determine by reference to records of the Corporation and by confirmation requests to vendors and sub-contractors. It is probable that additional amounts will be disclosed as additional replies are received to our confirmation requests. Generally the unpaid bills represent current charges on the houses under construction.

4. The note payable to Iroquois Development Corporation represents cash advances in 1960 and 1961 aggregating $33,981.65 less a repayment in February, 1961 of $10,000.

5. The advance payable to Mr. A. B. Fortner, Jr. represents principally cash advances from A. B. Fortner, Jr. in late 1960 and early 1961 aggregating $25,000, less cash repayments in late 1961 and early 1962.

6. The undeveloped land (containing an area for 45 lots) is carried at a cost of $750.00 per lot plus a pro-rata part of financing costs amounting to $55.01 per lot.

7. The developed lots (104 lots) are carried at costs of approximately $1,600.00 to $1,800.00 per lot.

Plaintiff's Exhibit 128

8. The houses under construction represent 12 houses either complete or under construction on a contract basis and 11 houses (including models and office) either complete or under construction on a speculation basis.

9. In examination of support for houses under construction, we noted that the invoices from vendors and subcontractors generally did not contain any approval indicating the receipt of material or approval of work done nor were there generally any receiving reports attached to the invoices. In many cases the invoices did indicate the lot number to which material or labor was supplied and in other cases this was indicated on the invoice by employees of the Corporation. We found no indication during our examination, however, that the invoices examined were not proper charges for materials or services.

If you have any further questions in regard to the financial statements or our examination, please advise.

Yours truly,

Assistant Manager

LBG:ph

PLAINTIFF'S EXHIBIT 132

MEMORANDUM

June 8, 1962

To: W. H. Lang
From: R. C. Dyas
Subject: Fortner Enterprises, Inc.
Louisville, Kentucky

At the request of the Homes Division, on June 5 Mr. Rollins and I participated in a meeting in Louisville with reprsentatives of the Homes Division and the subject dealership to discuss damage claims referred to in letter dated May 10 from the dealer's attorneys.

Plaintiff's Exhibit 132

Status of Loans. At May 31, the status of Credit Corporation loans to this dealership was as follows:

Loan No.	Type	Amount	Undisbursed	Balance	Maturity
1568	A&D(S)	$ 88,000	-0-	-0-	-
1568	C(R)	373,200	74,959	32,652	6/ 1/62
1568	A&D(S)	231,920	30,902	191,958	12/31/62
1568	C(R)	1,362,180	1,216,869	93,974	12/31/62
1602	A(S)	59,000	-0-	52,400	12/31/62
1602	C(R)	403,400	379,641	-0-	12/31/62

Notes:

Acquisition & Development Loans #1568 originally were secured by 186 lots, of which 31 (developed) were contributed to the dealership by A. B. Fortner (100% owner of the dealership) and 155 (undeveloped) were purchased from Iroquois Development Company, in which Mr. Fortner owned a 50% interest. The 155 lots purchased with loan proceeds at $170,500, which represented a reasonable value of $1,100 per lot but an undoubted profit to Iroquois. The 31 developed lots contributed by Fortner were valued at $62,000. The transaction provided Fortner a net liquidation of investment plus a profit.

Acquisition Loan #1602 originally was secured by 32 developed lots, which were purchased from Iroquois with the loan proceeds. Iroquois at that time had become 100% owned by Fortner. The purchase price was applied to retirement of a $24,000 mortgage and the balance to reimburse Fortner for working capital injected in the subject dealership.

These loans are guaranteed by the Homes Division pursuant to Underwriting Agreement dated Mrch 30, 1962. Shipments to date are reported at 67.

Background. Acquisition & Development Loans #1568 were closed on October 28, 1960. At the time of closing Acquisition Loan #1602 in August, 1961, the dealership had

taken some 35 shipments, and voiced some complaints regarding service and quality. These were relayed to the Homes Division and subsequently we were advised that satisfactory adjustments had been made.

Last month we received copy of letter dated May 10, addressed to the Homes Division by the Louisville law firm of Hamilton, Hopson & Hamilton as attorneys for the dealership, alleging damages for "inferior and subquality" components. Prior to our meeting on June 5, representatives of the Homes Division and A. L. Reutlinger, local counsel, had met with the dealer and his attorneys in an unsuccessful effort to obtain a specific list of claims upon which a settlement might be negotiated.

Meeting of June 5. At the meeting which Mr. Rollins and I attended, the dealer and his attorneys again declined to furnish a specific list of claims, stating that it is impossible to negotiate a settlement because they expect many more complaints from home owners in the future. They indicated that they might waive their claims if the Credit Corporation would modify its loan agreements to permit the building of conventional houses and extend certain "moratoriums" on the payment of interest and principal.

They suggested that such action by the Credit Corporation would enable them to build in the $10,000 price bracket, and that they would consider the use of our product if we could compete in this bracket and furnish an outright indemnity against complaints by home owners. The Homes Division advised that its product line is not designed for this bracket and in any event it would provide no such "open end" indemnity.

Mr. Rollins and I took the position that the alleged damages due to product appeared to be mere camouflage for an effort by the dealer to abandon his present market and seek a new one on Credit Corporation financing, and that we

were not inclined to offer any concessions with respect to our loan agreements. We suggested that the dealership now should direct its efforts to refinancing our loans.

At this point, attorneys for the dealer declared that no further purpose could be served by negotiations and that they would "see us in court". Thereupon, Mr. Rollins and I left the meeting, but Messrs. Boyd, Black and Reutlinger remained. Afterward, we learned that an agreement was reached for the dealership to prepare a specific list of claims and enter into negotiations for settlement with the Homes Division within a few days.

To facilitate these negotiations, I assured Mr. Reutlinger that the Credit Corporation would withhold action to enforce payment of its loans for a maximum period of two weeks, provided satisfactory progress is made in the negotiations with the Homes Division. Interest is now one month delinquent, and since maturity of one of the notes on June 1, all are technically in default. The Homes Division expects to receive the list of claims not later than Monday, June 11.

In the course of discussions at this meeting, the dealer made several observations that he is "broke," that he is going into bankruptcy, etc. We, therefore, advised him that it was necessary for us to invoke our right under the loan agreements to audit the books pertaining to this project, and immediately after the meeting engaged the firm of Ernst & Ernst to conduct such an audit. They agreed to commence the following morning.

Looking forward somewhat, it does not appear reasonable to expect the liquidation of our loans through use of our products by this dealership, regardless of the outcome of current negotiations. The dealer may refinance, but it is also likely that we will wind up with another project to

liquidate. It is not too early for consideration to be given to the management of such an undertaking.

RCD:ef

cc: W. L. Rollins
D. H. Boyd
H. R. Black
J. C. Bird

PLAINTIFF'S EXHIBIT 137

MEMORANDUM

March 3, 1960

To: W. H. Lang
From: R. C. Dyas
Subject: Fortner Enterprises, Inc.
Louisville, Kentucky
Acquisition and Development, $310,000

I have discussed the subject application by telephone with Mr. Boyd, pointing out the possibility that the dealer's lack of experience in the use of our product might result in a failure of this project and the eventual acquisition of the project real estate by the Credit Corporation.

Mr. Boyd expressed his willingness to assure the Credit Corporation that in the event the project real estate should be acquired, the Homes Division would take immediate action to place the property into production, either through activity by the Construction Department or some other dealer in the area, or a combination of both.

Mr. Boyd understands that maturity of the loan must be sufficiently extended to provide for a two-year building program.

cc: D. H. Boyd

PLAINTIFF'S EXHIBIT 138

December 30, 1959

Mr. W. H. Lang, President and Treasurer
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Fortner Enterprises, Louisville, Kentucky

Dear Mr. Lang:

Attached hereto is a copy of the Sales Department's recommendation to this office concerning Fortner Enterprises, associated with Zettwoch-Fortner Corporation, Louisville, Kentucky.

After reviewing this recommendation and the background financial information available from the Treasury Department, it is my judgment that this builder warrants further consideration of the financial aspects of the attached.

I would recommend, therefore, that the Credit Corporation enter into financial negotiations with Fortner Enterprises, subject to the usual prudent judgment and the hope that an agreement can be reached which will assist in providing additional shipments in the Louisville (Kentucky) area for 1960.

Copies of the detailed back-up material are being forwarded promptly to Mr. Dyas through our Treasury Department.

Yours very truly,

President

Enc.

CC: H. R. Black

W. L. Lieber—Please forward one of the attached copies with other material to Dick Dyas.

PLAINTIFF'S EXHIBIT 178

DAILY ACTIVITY REPORT
RESIDENTIAL

Date: 3/2/61 Sales Representative Grayson
Firm: Fortner Enterprises
Address: Louisville, Ky.

Results of call: Fortner had 23 salesmen to attend sales training program at the plant.

PLAINTIFF'S EXHIBIT 200

[LETTERHEAD OF UNITED STATES STEEL HOMES]

May 24, 1962

To: Mr. H. R. Black
From: Mr. E. L. Akers, Jr.
Subject: Fortner's Miscellaneous Shipments and Credits

Listed below is a brief summary of material shipments in addition to Home Packages and credits for Fortner Enterprises, Inc., and covers 1961 and 1962 to date. Please be advised that figures shown below may not be exact since there are many small items on which pricing is not available at this writing.

1. Miscellaneous materials ordered by dealer in addition to original Home Order..... $4,894.00
2. Miscellaneous materials shipped by USSHD to correct USSHD's errors and charged dealer pending return of materials for credit—see below..... 1,656.00

Total Charges to Dealer..... $6,550.00

Plaintiff's Exhibit 200

3. Miscellaneous materials shipped by USSHD to dealer to correct USSHD's errors and not charged to dealer.
   - Shortages..... $501.80
   - Errors..... 39.25
   - Damages..... 15.82
   - Warranty..... 275.13

   Total.....($832.00)
4. Materials returned to USSHD for credit and applied both against Section 1 and 2 above..cr 2,188.51
5. Credit adjustments made to dealer's account.
   - Advertising and materials for display use. $1,291.95
   - Credit adjustments to dealer including local purchases of material and labor expense..... 619.00

   $1,910.95

In addition to the above direct expenses, you are aware of the time and trips involved by our company, suppliers and dealer's personnel in attempting to correct steel folding doors, windows and drywall, plus the dealer's complaint of no reimbursement for local cost of installing kitchen counter top replacements.

(s) E. L. A.

PLAINTIFF'S EXHIBIT 201

[LETTERHEAD OF UNITED STATES STEEL HOMES]

May 7, 1962

To: H. R. Black, Vice President-Sales
From: Stanley J. Mack, Manager-Dealer Sales
Subject: Fortner Enterprises, Inc.-Complaints

As a follow-up to my previous memorandum to you concerning the Fortner problem, on Friday I had a meeting with Derrel Longest and with the representative for Malta Windows. This meeting was requested by Derrel and was prompted by the copy of my memorandum which you forwarded to Mr. Longest. Mr. Longest had requested that we call on Fortner with each of the vendor representatives whose products apparently were in question. At Mr. Longest's request, I called Mr. Fortner on Friday to set up a visit. We were unable to do this for Friday, May 4 but have set up a visit for May 11. Paul Grayson, Derrel Longest, Vern Gessner of Malta Windows and myself will visit the project, and I have asked Mr. Fortner to select the homes with the window problems for our inspection. I intend to schedule further visits with each of the vendor representatives and Purchasing.

I mentioned to Mr. Fortner that we intended to vigorously follow up on these complaints and intended to eliminate these problems if at all possible. I also reminded him that, as soon as he was able to gather the specific costs and information concerning his complaints, we would like to take a look at this. He told me that he had so instructed Miles Prescott. During our conversation, he also mentioned that Paul was preparing plans on the low-cost house and he had not yet received these plans.

I checked Paul Grayson concerning these plans this morning and Paul advises that he was unaware that Fortner wanted complete submission drawings for this

plan, since Fortner had not, as yet, received F.H.A. approval for a 221 house in Golden Meadows. In any event, Paul planned to prepare these submission drawings and see Fortner tomorrow, Tuesday, May 8.

I will keep you informed of progress with this dealership and especially the results of our meeting this coming Friday, May 11.

(s) Stanley J. Mack
Manager-Dealer Sales

PLAINTIFF'S EXHIBIT 202

NOTICE

As you probably all know our Dealer, Fortner Enterprises, Louisville, Kentucky, is exhibiting one of our homes at the Louisville Home Show.

The Show, currently in progress, will run through April 8, and is being held at the Kentucky Fair & Exposition Center.

The Sales Department feels that it would be most advantageous for employees of the Homes Division, if possible, to attend this Home Show. It would also be helpful, customer-relationwise, if you do visit the exhibit, to make yourself known to the employees of Mr. Fortner who are manning the model home.

Although we are participating in a small way with Mr. Fortner in this promotion, the majority of the expense and effort has been on his own initiative and will be extremely beneficial in promoting our homes in the Louisville area.

Harry R. Black
Vice President-Sales

PLAINTIFF'S EXHIBIT 226

[LETTERHEAD OF UNITED STATES STEEL HOMES]

INTER-OFFICE MEMORANDUM

Date: 10/26/60

To: H. R. Black, Gen'l. Mgr.-Sales
From: Paul Grayson, Sales Rep.
Subject: Fortner Enterprises

Enclosed are signed franchise forms for the subject.

This has been a long pull as you are well aware, it was back in Dec., of 1959 that Neil and I first contacted these people.

I believe that this will develop into the best dealer that we have had in the Louisville area.

Thanks very much for your help.

(s) Paul

PLAINTIFF'S EXHIBIT 237

UNDERWRITING AGREEMENT

This Agreement, made as of this 30th day of March, 1962, by and between U. S. Steel Homes Credit Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware (hereinafter called "Credit Corporation"), and United States Steel Homes Division, United States Steel Corporation, a corporation organized and existing under and by virtue of the laws of the State of New Jersey (hereinafter called "Homes Division");

WITNESSETH:

Whereas, Homes Division from time to time has requested Credit Corporation to make loans to or for the benefit of certain of its franchised dealers for the purpose of assisting such dealers in the financing of residential

projects utilizing products of Homes Division, and Credit Corporation has made such loans; and

Whereas, Such loans have been requested and made pursuant to certain authorities granted by the Finance Committee of the United States Steel Corporation and the Board of Directors of Credit Corporation, with the intent that any and all loss which might be incurred by Credit Corporation in the liquidation of such loans should be underwritten by Homes Division; and

Whereas, All such loans as have been previously requested and underwritten by Homes Division which have not been fully liquidated at the date hereof are listed in the schedule attached hereto styled and identified as "Loans Guaranteed by United States Steel Homes Division as of March 30, 1962" (hereinafter called "Guaranteed Loans"); and

Whereas, It is contemplated that additional loans in the future shall be requested by Homes Division and made by Credit Corporation with the intent that any and all loss which might be incurred by Credit Corporation in the liquidation of such loans shall be underwritten by Homes Division; and

Whereas, The parties hereto desire to define more fully their mutual intent with respect to the underwriting of all such loans;

NOW, THEREFORE,

In consideration of the mutual promises hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

1. Homes Division hereby:
   a. Agrees to pay unto Credit Corporation any and all loss which may be incurred by Credit Corporation on account of any balance of principal and

interest of any of said Guaranteed Loans remaining unpaid upon exhaustion by Credit Corporation of all effort for the collection thereof as may be practicable, together with all direct cost and expense of collection; such payment to be made upon demand by Credit Corporation; and

b. Consents that the maturity dates of said Guaranteed Loans may be extended, or the terms of any of said loans may be otherwise modified, by Credit Corporation without affecting the obligation of Homes Division under this Underwriting Agreement, and waives all diligence, presentment, notice, and defenses based thereon.

2. The parties hereto agree:

a. That any additional loan to be underwritten in the future by Homes Division shall be made by Credit Corporation only after receipt of an instrument in writing, duly executed by Homes Division, which shall expressly provide that Homes Division:

(1) Agrees to pay unto Credit Corporation any and all loss which may be incurred by Credit Corporation on account of any balance of principal and interest of such loan remaining unpaid upon exhaustion by Credit Corporation of all such effort for the collection thereof as may be practicable, together with all direct cost and expense of collection; such payment to be made upon demand by Credit Corporation; and

(2) Consents that the maturity date of such loan may be extended, or the terms of such loan may be otherwise modified, by Credit Corporation without affecting the obligation of

Homes Division under such instrument, and waives all diligence, presentment, notice and defenses based thereon.

b. That any such additional loan shall be made by Credit Corporation and underwritten by Homes Division only after (1) Homes Division has requested Credit Corporation in writing to make such loan as a financial risk in the regular course of its business, (2) Credit Corporation has determined that such loan may not be made as a financial risk in the regular course of its business, (3) Credit Corporation has advised Homes Division of such determination in writing, setting forth the reasons for such determination and all such data and information as may be pertinent to a determination that such loan might be made as a commercial risk, including proposed terms and conditions of such loan as a commercial risk, and (4) Homes Division has directed Credit Corporation in writing to proceed to make such loan as a commercial risk in reliance upon the underwriting of such loan by Homes Division as above set forth; provided, however, that the procedure outlined in this subparagraph shall not apply to the underwriting by Homes Division of disbursements made on loans to finance the construction of model homes pursuant to Model Home Program approved by the parties hereto on June 8, 1961, as such program has been or may be amended or modified.

In Witness Whereof, Credit Corporation and Homes Division have caused this Underwriting Agreement to be

Plaintiff's Exhibit 237

executed in duplicate originals as of this 30th day of March, 1962.

U. S. Steel Homes Credit Corporation

By: /s/ W. H. Lang
President

United States Steel Homes Division
United States Steel Corporation

By: /s/ D. H. Boyd
President

Attest: /s/ B. L. Rawlins
Secretary

Attest: /s/ W. L. Lieber
Asst. Secretary

Attachment

LOANS GUARANTEED BY UNITED STATES STEEL HOMES DIVISION AS OF MARCH 30, 1962

This schedule entitled "Loans Guaranteed by United States Steel Homes Division as of March 30, 1962," is the schedule referred to in that certain Underwriting Agreement dated March 30, 1962, by and between U. S. Steel Homes Credit Corporation and United States Steel Homes Division, United States Steel Corporation, and is an attachment to such Underwriting Agreement.

Plaintiff's Exhibit 237

Date of Loan	Name of Borrower	Loan No.	Original Amount	Maturity Date
1/14/60	United Construction Co.....	1519	$ 160,000	7/ 1/62
3/22/60	Lakewood Manor, Inc.....	1529	154,485	4/ 1/62
5/ 3/60	Hillsdale Development Corp.....	1533	161,300	6/ 1/62
9/ 2/60	Stoll-Myers Builders, Inc.....	1557	260,000	9/ 1/62
9/28/60	Dorsey Development Corp.....	1563	390,355	4/ 1/62
10/14/60	W. Anthony Torsell, Inc.....	1562	57,820	5/ 1/62
10/28/60	Fortner Enterprises, Inc.....	1568	88,000	6/ 1/62
10/28/60	Fortner Enterprises, Inc.....	1568	231,920	12/31/62
1/17/61	Midland Development Co., Inc....	1574	126,675	8/ 1/62
4/ 7/61	North Hills, Inc.....	1579	225,000	5/ 1/62
5/11/61	Clifford C. Loss, Inc.....	1584	165,200	12/ 1/62
7/25/61	Harrison Homes, Inc.....	1600	116,000	8/ 1/62
7/27/61	Heritage Building Corp.....	1599	94,920	8/ 1/62
8/ 2/61	Fortner Enterprises, Inc.....	1602	59,000	12/31/62
8/31/61	W. Anthony Torsell, Inc.....	1603	31,200	12/31/62
10/ 5/61	Regency Homes, Inc.....	1610	84,000	4/ 1/63
10/16/61	Park Building Corp.....	1613	50,000	12/31/62
12/26/61	Midland Development Co., Inc....	1617	48,645	7/ 1/63
2/28/62	Allardt Homes, Inc.....	1626	89,040	3/ 1/63
3/21/62	Thunderbird Homes, Inc.....	1627	156,600	4/ 1/63
10/19/59	North Cincinnati Builders, Inc....	1501	79,100	12/31/62
12/ 8/59	Fourteenth Ohio Builders, Inc....	1512	22,500	10/31/62
1/ 6/60	Ninth Meadowdale, Inc.....	1517	42,900	6/ 1/62
1/28/60	Valley Hi, Inc.....	1521	21,200	6/ 1/62
3/ 2/60	Third Hoosier Villas, Inc.....	1525	24,500	8/ 1/62
4/19/60	Valley Hi, Inc.....	1535	67,500	12/31/62
5/16/60	Ninth Meadowdale, Inc.....	1538	146,250	12/31/62
6/ 7/60	Fourth Hoosier Villas, Inc.....	1544	75,000	12/ 1/62
6/30/60	Highland Terrace, Inc.....	1547	174,500	6/ 1/62
7/25/60	Hoosier Villas, Inc.....	1540	190,800	12/31/62
8/ 5/60	Valley Hi, Inc.....	1552	94,050	10/ 1/62
9/29/60	Willow Dell Builders, Inc.....	1559	173,950	4/ 1/62
10/27/60	Valley Hi, Inc.....	1560	253,800	4/ 1/62
1/17/61	Third Hoosier Villas, Inc.....	1577	51,300	8/ 1/62
6/16/61	Valley Hi, Inc.....	1586	78,100	12/31/62
6/21/61	Valleydale Builders, Inc.....	1585	404,390	12/31/62
6/29/61	Fifth Cincinnati Builders, Inc.....	1588	81,900	12/31/62
6/29/61	North Cincinnati Builders, Inc....	1589	155,100	12/31/62
6/29/61	North Cincinnati Builders, Inc....	1590	107,550	12/31/62
6/29/61	North Cincinnati Builders, Inc....	1591	244,900	12/31/62
7/11/61	Ninth Meadowdale, Inc.....	1598	24,920	12/31/62
10/ 6/61	Twelfth Ohio Builders, Inc.....	1609	103,680	4/ 1/63
12/13/61	Willow Dell Builders, Inc.....	1615	124,550	7/ 1/63
1/ 3/62	North Cincinnati Builders, Inc....	1618	292,400	12/31/63

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Date of Loan	Name of Borrower	Loan No.	Original Amount	Maturity Date
1/10/62	Fourth Hoosier Villas, Inc.....	1619	126,850	7/ 1/63
9/30/59	Twelfth Ohio Builders, Inc.....	1496	22,000	9/30/62
9/30/59	Valley Hi, Inc.....	1497	12,500	9/30/62
12/16/59	Valleydale Builders, Inc.....	1513	58,264	12/31/62
12/22/59	Fifteenth Ohio Builders, Inc.....	1515	24,900	12/31/62
1/11/60	Willow Dell Builders, Inc.....	1516	325,000	12/31/62
1/28/60	Hoosier Villas, Inc.....	1520	105,000	12/31/62
10/27/60	Valleydale Builders, Inc.....	1566	60,900	12/31/62
10/27/60	Twelfth Ohio Builders, Inc.....	1567	32,700	12/31/62
12/ 9/60	Caddy Vista Homes, Inc.....	1576	160,000	12/ 1/62
4/26/61	Broyhill Land Corporation.....	1582	1,000,000	6/30/66
4/26/61	M. T. Broyhill & Sons Corp.....	1583	500,000	6/30/66
7/11/61	Midland Development Co., Inc.....	1595	76,450	9/ 1/62
10/ 4/61	Twelfth Ohio Builders, Inc.....	1607	32,565	12/31/62
10/25/61	Valleydale Builders, Inc.....	1608	60,900	12/31/62
11/17/61	Steel Homes, Inc.....	1612	42,500	12/31/62

In Witness Whereof, Credit Corporation and Homes Division have caused this Underwriting Agreement to be executed in duplicate this 30th day of March, 1962.

U. S. Steel Homes Credit Corporation
By: /s/ W. H. Lang
President

United States Steel Homes Division
United States Steel Corporation
By: /s/ D. H. Boyd
President

Attest: /s/ B. L. Rawlins
Secretary
Attest: /s/ W. L. Lieber
Asst. Secretary

Attachment

PLAINTIFF'S EXHIBIT 238

[LETTERHEAD OF UNITED STATES STEEL HOMES]

August 1, 1962

Mr. Merrill Russell
Assistant General Solicitor
United States Steel Corporation
525 William Penn Place
Pittsburgh 30, Pennsylvania

Dear Mr. Russell:

Re: Fortner Litigation

The attached material from H. R. Black, Vice President-Sales, will doubtless be of interest by way of providing a perspective of the Louisville home building market and our participation in the past several years.

You will also be interested in knowing to what extent and in what manner representatives of U. S. Steel Homes Division offer the services and assistance of U. S. Steel Homes Credit Corporation to its builder customers such as A. B. Fortner, and others. Enclosed is a copy of that section of our Salesman's Manual which deals with the subject and sets forth the position of our Division insofar as regular sales contacts with customers and prospective customers are concerned. As you know, we regularly do business with franchised builders from whom no financing assistance is requested of U. S. Steel Homes Credit Corporation. Thus far in 1962 these dealers have accounted for 30% of our unit volume.

Beyond the "regular" program of financing assistance offered to qualified builders and negotiated by the Credit Corporation there exists a program of "special" assistance which provides a greater amount of interim financing participation in selected markets with selected dealers. Fortner represents one of the latter. In these cases our sales

department, in an attempt to obtain distribution in a new market or to supplement distribution in an existing market, will discuss the possibility of a building program using U. S. Steel Homes with a dealer who is believed to have the necessary qualifications to be successful. Frequently the builder states a need for substantial interim financing to support the program and after commercial evaluation and a satisfactory preliminary check of credit and reputation, a recomendation is forwarded to U. S. Steel Homes Credit Corporation that negotiations be undertaken to arrive at a satisfactory basis for financing assistance consistent with the conditions which exist in each instance. In certain cases where Credit Corporation states that the amount of assistance provided in relation to the value of the security is bebond the normal limits of a purely financial transaction, Homes Division underwrites the arrangement so as to protect Credit against potential losses. Our agreement with Fortner is in this category.

We do not require builders to utilize the financing service of our Credit Corporation. The relatively high degree of our volume so supported results from requests on the part of the builder rather than pressure on the part of our sales personnel.

In the case of Fortner Enterprises, although our sales department actively sought the business, Mr. Fortner obviously had several choices of prefab manufacturers who are actively shipping homes into the Louisville market, based on the best information we have. In addition there was the conventional method of building which accounts for an estimated 80% of all residential construction in the local market. Local financing institutions such as banks and savings associations also offer financing assistance to home builders. Loans for this purpose are generally conditioned on approval by the lending institution of specific plans for

land, its development, and the houses to be erected and sold. Frequently, the purpose of these loans is to obtain long term mortgages for the financial institution and the builder must direct his home buyers to place their mortgage loans with the institution which is supporting his operation.

If there is any additional information which will be of assistance to you please let me know.

Very truly yours,

(s) D. H. Boyd
President

lp
cc: Mr. A. J. Paddock
Mr. W. H. Lang

PLAINTIFF'S EXHIBIT 239

[LETTERHEAD OF UNITED STATES STEEL HOMES]

July 31, 1962

To: Harry R. Black, Vice President—Sales
From: Andrew Cowart, Assistant to Vice President—Sales
Subject: Louisville Housing Information

In accordance with your request. I have assembled the housing data relative to the Louisville marketing are over the last few years. Attached are the following lists:

1. *Housing Starts in Louisville Market.*

This information is based on building permits issued in all incorporated areas in Jefferson County.

2. *Manufactured Homes in Louisville Market.*

This list is comprised of all the home manufacturers who have shipped houses into Louisville, according to the Asso-

Plaintiff's Exhibit 239

ciated Home Builders of Louisville. This list is complete to the best of their records and knowledge.

3. *United States Steel Homes Shipped into Louisville Market.*

This is broken down by dealerships covering the period from January 1, 1959, to date.

(s) Andy

7-31-62

HOUSING STARTS IN LOUISVILLE MARKET

(Based on Building Permits Issued For Single Family Dwelling Units in All Incorporated Areas in Jefferson County.)

1960	1961	1962 to date
3,144	3,201	2,035

7-31-62

HOME MANUFACTURERS SHIPPING INTO THE LOUISVILLE MARKET

Empire Homes
Tru-Bilt Homes
National Homes Corporation
Richmond Homes, Inc.
Scholtz Homes, Inc.
Kingsberry Homes Corporation
Pease Wood Work Company
Inland Homes Corporation
Swift Homes*
Jim Walters Homes Corporation*

The Associated Home Builders of Louisville estimates that at least 20% of housing starts are manufactured homes.

*Shell Homes

Plaintiff's Exhibit 239

7-31-62

UNITED STATES STEEL HOMES SHIPPED INTO LOUISVILLE MARKET

Dealer	1959	1960	1961	1962 to date
A. W. Brent Co.	0	1	0	0
Eagles Company	0	0	7	21
Fortner Enterprises, Inc.	0	3	55	11
O. K. Co.	0	3	7	0
Town & Country	0	0	4	4
Total	0	7	73	36

PLAINTIFF'S EXHIBIT 240

CONSTRUCTION FINANCING

It should be quite clear by now that every program has to start with a qualified lender's written commitment to purchase the permanent loans. After you and your dealer have determined the best type of program to use, whether it be one or more of the sections of FHA, VA or conventional financing, you will set about obtaining a "take-out" from the permanent lender.

With that written commitment either in hand or assured, you are then in a position to obtain a construction or interim loan commitment.

Here we will work from the yellow manual headed "Conventional and Construction Financing" starting on Page 31. We'll follow this material in part, and I will explain the Credit Corporation's participation as we proceed.

Read: "An Advantage of Prefabrication"
"The Type of Permanent Loan Commitment"

Let's break down these three types of construction loans and apply the Credit Corporation's programs.

Type #1—Firm Commitments to owner-occupants.

This one is easy. With a firm commitment on the buyer from FHA, VA or a conventional lender, most any bank will make a construction loan. Usually, the permanent lender or the mortgage company representing a permanent lender, will preclose such a loan, pre-record a note and mortgage and disburse construction money from the permanent loan. This is especially true if it is a conventional loan made by a Savings & Loan Asociation or Bank. They are generally using their own funds. In the case of FHA or VA firm buyer commitments and where the permanent loan is initiated by a mortgage banker representing some other prime investor, the mortgage company usually has a line of bank credit that will allow them to close the loan, draw the mortgage, make disbursements and "warehouse" the loan until the house is completed and the mortgage can be delivered to the prime investor.

Now, how can the Credit Corporation participate in this type of program? If the dealer so desires, you can set up a request for a construction loan commitment based on presold houses and buyers approved by FHA or VA with loans preclosed. The fee of ½ of 1% plus 6% interest will apply but the construction loans will be set up individually and the fee taken from each loan as it is made. The Credit Corporation does not like this type of program because it means considerably more paper work when individual construction mortgages have to be drawn. They prefer to make the blanket construction loans which we will discuss shortly. I would recommend that you not request less than a $100,000 total commitment for this type of loan.

Type #2—Firm Commitments to operative builders as permanent mortgagors.

In this case the builder obtains from FHA operative builder commitments which you will hear referred to as

OBC's. This is, in effect, a dual commitment. The house can be built under an OBC without a buyer and later converted to an owner-occupant commitment as the buyer is located and approved. Under the terms of this commitment, if no buyer is found, the loan can be closed in the name of the builder in an amount not to exceed 85% of the insurable amount to an owner-occupant. To illustrate this, let's assume FHA has given the house an appraised value of $10,000. This means that they would insure a loan in an amount up to $9,700 to an approved owner-occupant. If closed in the name of the builder, the maximum loan would be $8,245 or in round figures, $8,200. The builder then makes the regular monthly mortgage payments and is at liberty to rent the house, sell it on a contract for deed, or land contract, or otherwise dispose of it as he sees fit. Some FHA offices are very reticent about making this type of commitment; and in any event, the number of such commitents outstanding will be determined by FHA's experience with the builder and by his financial statement.

Again, as in the case of firm commitments to an owner-occupant, most lenders are willing to make construction loans based on an OBC because they are relatively safe in that they can be closed in the name of the builder.

The Credit Corporation can and will make a construction loan commitment based on an operative builder commitment from FHA and a take-out commitment from a permanent investor. These loans do not have to be closed prior to construction and can be set up in a blanket construction loan to the builder. The amount will not exceed the mortgage amount on the permanent loan to the builder.

The one particular place that I can see a definite need for OBC's is in a town house program. While town house units can be sold individually, the problem arises in the fact that those units are joined together and built as one

building. Let's assume that we are planning basically 6-unit buildings. The dealer might sell three of the units and the buyers are approved. There are three unsold. Obviously, you can not construct the three sold units now and the three unsold units later. So, if the dealer had OBC's for one or more buildings of 6 units each, they could be built, closed in his name and then sold to an owner-occupant. This is one case where the Credit Corporation would consider making speculative construction loans to the builder. He would have to obtain the OBC's and a firm commitment, probably from "Fanny Mae" to purchase the permanent loans.

Let me cite an example: In Rankin, Pennsylvania, which is suburban Pittsburgh, George McShane, our dealer, has successfully bid on a number of lots in an Urban Redevelopment program. He is obtaining 18 operative builder commitments as well as a "Fanny Mae" commitment under their special assistance program as applies to Section 221. One six-unit building will be furnished and used as a model, and two six-unit buildings will be constructed for speculation. We expect that these units will be sold while under construction, but if not, George can close them in his name, then sell or rent them at his leisure. The Credit Corporation has tentatively argreed that they will make the construction loans, and as a building is sold out, replace it with another, etc.

This is specifically an FHA program. VA does not provide for this type of commitment.

Type #3—Conditional commitment to make the permanent mortgage loan.

This is a commitment from a lender to make a permanent mortgage loan when a buyer is approved, based on an FHA conditional commitment, a VA certificate of Reasonable Value, or a conventional loan plan.

In the normal program this one is most commonly used. A Master FHA Conditional Commitment or VA CRV has been obtained covering x number of lots and houses. Models are built, opened and sales made based on conditional commitment appraised values. Applications for firm buyer commitments are made to FHA or VA and the permanent lender. As previously mentioned, construction money can be obtained when firm buyer approval from all agencies is in hand and the loan is preclosed. But this is cumbersome and time consuming. The dealer can wait sometimes up to two or three months for a buyer commitment from FHA or VA.

The Credit Corporation's Blanket Construction Loan is the best answer to this problem. Once it is set up and operating, you will find that it runs smoothly and saves considerable time.

Under the blanket construction loan program, you and your dealer will predetermine a conservative estimate of a year's volume of business. Then take the highest anticipated selling price times the number of units planned. The Credit Corporation can go as high as 85% of the appraised value of house and lot, although 80% will usually be sufficient.

As an example, let's say that your dealer anticipates a mimimum of 50 sales over a twelve-month period. His price range is planned at $12,000 to $15,000. Using the higher figure of $15,000 he anticipates a maximum sales volume of $750,000 on 50 houses. He further determines that he will require 85% for construction so the loan would be set up for a total of $637,500. This would mean a maximum individual loan of $12,750 dependent upon FHA's appraised value.

You might be asking yourself here, "Why use the top figure of $15,000 when the average sales price will be closer to $13,500?" "Why should he pay an additional fee for the

difference when an average amount per house would cover him totally?" The Credit Corporation as previously noted determines their maximum individual construction loan by the total amount divided by the number of units. So, let's suppose we used an average sales price of $13,500. This would mean a maximum individual construction loan of $11,475 which would be fine on the $13,500 house, but what about those that sell at $15,000? Will $11,475 be enough to cover all costs? That's only 76½% of the appraised value. Probably the dealer would have to "dig down" into his working capital for the difference.

Let's just compute the difference in fees based on ½ of 1%. Fifty homes at $15,000 times 85% was $637,500. Fifty homes at $13,500 times 85½ is $573,500 a difference of $63,750, for a difference in fees of only $368.75 which is little enough to pay to insure having enough money to cover construction costs on any house sold.

So the commitment amount is to be $637,500. A blanket construction mortgage is drawn by the Credit Corporation for this amount. This means that the dealer must have or be able to get title to the lots in question so that the Credit Corporation can hold first mortgage rights.

Perhaps the dealer is buying developed lots from a developer as he needs them for construction. It is sometimes possible that the seller will convey title to a number of lots, taking back a second mortgage or deed of trust and subordinating to the Credit Corporation's first mortgage. Their second mortgage could be satisfied as the lots are released, for construction, from the first mortgage.

The ½ of 1% fee is an advance commitment fee which can be paid in cash by the dealer, or it can be added to the loan amount, disbursed to the Credit Corporation and, of course, would bear interest at 6%.

One of the biggest advantages of the blanket construction loan to the dealer is the fact that upon approval of

the buyer by an investor, the house can be shipped and construction started. A firm buyer commitment from FHA or VA is not required at this point. At the same time that the application is submitted to FHA or VA, it can go to the investor. If the Credit Corporation is making the construction loan, they will accept an accredited lender's approval or, in the case of their own "standby" will pass on the buyer themselves. As a matter of fact they will approve or reject the application on the day it reaches their office. Upon their approval they will issue a Letter of Credit to the Homes Division clearing the house for shipment. The worst that can happen then, if FHA or VA rejects the buyer, is that the dealer has a speculative house on hand which usually can be readily sold.

As to speculative construction loans, we have discussed one possibility by use of FHA OBC's. But what about making speculative loans from a blanket construction loan? By policy this type of loan is not available from the Credit Corporation other than on a reasonable number of model homes. This will especially apply to a new dealer with whom we have no experience. After satisfactory experience with a dealer as to market payment of bills, etc., it might be possible to get a small number of spec. loans from the Credit Corporation taken directly from the blanket loan on a "roll over" basis. By this I mean a limited number outstanding at any time. When one is sold, it can be replaced, etc. As stated, this is not necessarily policy, but can be done administratively after a dealer has proved himself and his market.

In setting up a construction loan, particularly with a new dealer, a conservative approach is always best. While you should consider and plan a year's program, it is not always necessary to provide that much construction money at the start. It is not at all difficult, once a program is

underway, to get additional funds when needed. As a general rule, I would not request less than $100,000 for construction loans because of certain costs to the Credit Corporation for processing, etc. $100,000 is only 7 or 8 homes anyway, so it would not be worth while to request less.

As to construction loans based on a conventional mortgage take-out, these as previously mentioned are usually on a preclosed basis. We discussed this type of loan as applied to FHA and VA mortgages. If the dealer so desires, I am sure that a blanket construction loan could be set up with a written commitment from the lender that he will purchase x number of conventional mortgages up to a total of x number of dollars, with certain specified terms and conditions. In other words, providing much the same protection to the Credit Corporation as an investor commitment on FHA insured or VA guaranteed loans. Of course, with a conventional mortgage take-out FHA and VA compliance inspections would not be made so it would necessitate inspections by the lender or by one of you.

Refer to Page 35—"Five Basic Construction Loan Arrangements"

Refer to Page 38—"Cost of Construction Money" and "Financing Costs in your Budget"

The final section in the yellow manual is on Construction Loan Procedure. This section does not need to be covered in detail here. It is good to know these procedures, and you should study this at your leisure, but it is not necessary to know in detail in order to talk about financing to your dealers.

Questions on Construction Financing

1. What is the purpose of a construction or interim loan?

2. What is the first requirement of the Credit Corporation in order to make a construction loan commitment?
3. What is meant by a "blanket" construction loan? What are the advantages?
4. What is an OBC? How is this used for speculative loans?
5. How is a construction loan generally handled on a conventional mortgage basis?

LAND ACQUISITION AND DEVELOPMENT FINANCING

Now, we get into the most difficult and varied area of financing—that of acquiring and developing land into buildable lots.

When asked, "What's your land development deal?", you can almost answer with the question, "How high is up?".

So far, in this session, we have discussed: Permanent financing which finances our product for the home owner; construction financing which finances the construction of our product for the dealer. In all cases to this point we have financed our product, and now we have to finance a piece of ground where we hope and expect to build our product, but, more often than not, the Credit Corporation has to disburse a sizeable amount of money before we even ship one model. There are no buyers waiting in line, there are no houses to sell, there's just a piece of raw earth.

So it is, from our standpoint, a higher risk loan and must be scrutinized much more closely than any other type.

Some of your sales representatives have worked with the Credit Corporation on land financing programs, and some of these programs have been very special. We are going to establish a procedure today for handling this type of program, but basically, you are only going to concern

yourselves with the standard acquisition and development loan programs of the Credit Corporation.

Many of you have heard it before, but again, it bears repeating, that is: the three principal factors to determine in making a land development request. They are:

1. Evidence that there is a potential market for the number of homes in question.
2. Substantial credit and financial status sufficient to warwant making the loan.
3. Ability of the dealer organization to marchandise; erect and close out the number of homes in question.

When you are satisfied on all three of the above-mentioned conditions, you have the basis for a program.

Now, let's get into details and mechanics of a standard deal with maybe some ramifications that would still be classed as standard.

If the dealer, or prospective dealer, qualifies in all departments, you may discuss the financing program as follows:

The Credit Corporation can make loans in an amount up to 60% of the combined cost of land and the development of that land or a portion thereof. In other words, if the total estimated cost is $100,000—to use round figures—the Credit Corporation can lend up to $60,000 to develop this land, the dealer putting his $40,000 in first; and, I might add, the Credit Corporation taking their $60,000 back out first. As a more general rule of thumb, if the dealer has clear title to the land, the Credit Corporation can make the full development loan. This would usually be classed as standard unless for some reason the development costs were too far out of line.

Again, as on a construction loan, you want to consider only a year's program of development on a very con-

servative basis. In fact, cut the development portion as low as possible as far as the number of lots is concerned. Then, if the program "takes off" and sales are good, you can always come back for an additional commitment.

Mechanically, when a development loan is made, a first mortgage is placed by the Credit Corporation on the land involved, and a release value per lot is established which will pay back the loan as houses are shipped and lots are released from the blanket mortgage. This release value generally is set up at FHA or VA value for the lot and should pay off the mortgage when 75%, or less, of the lots are used. As an example of what I'm saying here, let's take the theoretical $60,000 loan which was 60% of the total $100,000 cost. Let's say it covers 40 lots. The FHA average value per lot is $2,800 which is used as a release value. This would pay out in approximately 22 lots leaving 18 fully developed lots now owned by the dealer free and clear. When these are sold and closed, the dealer has his $40,000 back with a profit.

Do not try to negotiate the release value, that's the Credit Corporation's business. I don't believe it would hurt anything, however, to suggest to the dealer that the Credit Corporation usually likes to use the commitment value for lots as their release value.

Using the above example then and tying in a construction loan, how does it work?

There will be two notes—one for the land development loan portion and one for the construction loan portion—secured by one mortgage on the land. Let's say that prior to construction, the full $60,000 has been disbursed for development. On a pro rata basis, that's $1,500 per lot. Since that has already been disbursed, the $1,500 is held out of the construction loan. But we have a release value of $2,800. The difference, or $1,300, comes out of the per-

manent mortgage when the house is completed and the loan closed. So, if the sale price was $16,000, the construction loan was 85% of that, or $13,600. The $1,500 per lot that was disbursed to the land note is withheld and the dealer has a total of $12,100, exclusive of land cost, with which to build his house. On closing the loan he gets the $16,000 less fees and discounts, less the $12,100 less the $1,300 which was the difference between the land loan per lot and the release value. The balance remaining then should represent his gross profit on the house, exclusive of the lot. The lot profit is, of course, delayed until all of the lots are used.

If there is some doubt in your mind about the merits of the deal, particularly as to the market, you should inject a prior sales requirement before disbursement. In other words, proof of the market before the Credit Corporation is exposed to any great extent. With this prior sales requirement, the procedure as far as the Credit Corporation is concerned, is much the same as always. The request is made, the loan negotiated, the agreements signed and the loan can even be closed, however, there would be a conditional clause in the loan agreement stating that the Credit Corporation would disburse for development when x number of sales have been made. Judgment would have to be exercised here as to what percentage of the lots sold would be proof of the market. It could be anything up to 50% of the lots covered in the loan, largely dependent on your knowledge of the market and the dealer.

Now, what would constitute a sale in this case? Just a signed offer to buy won't be enough. A completed application with investor approval of the buyer would be a bona fide sale.

This prior sales requirement can work for the dealer's benefit as well as the Credit Corporation. If there is doubt

about the market, but the Credit Corporation disburses on the land, puts in certain improvements and an unsuccessful sales program is launched, the dealer is bound to U. S. Steel Homes for the number of lots required to pay off the mortgage, and the Credit Corporation has funds tied up in the program with small chance of recovery prior to maturity of the loan.

As you know, however, situations alter circumstances. Maybe it would be more practical to get some development in place prior to opening a sales program. In some markets, this seems to be a must. I have not found the Credit Corporation too strict on this prior sales requirement. It could be to your advantage or disadvantage. This you will have to decide.

There are a couple of factors incorporated in the loan agreements during the past year or so that give both you and the Credit Corporation a safety valve. As you probably know, most of the other major manufacturers make development loans in some form or another, but most of them charge a fee of 10% or more in addition to simple interest. We only charge a ½ point fee. This, of course, puts us in a very competitive position, but there have been cases in the past where it worked against us. The ½ point fee and 6% interest being very attractive on land loans, some developers have set up a program with us, borrowed the money, developed lots, then offered a complete development to another investor, paying off the Credit Corporation and never building a house. This accomplishes nothing for us. So, today, the Credit Corporation has them sign a contingent liability note for 5% per year on the principal balance not to exceed 2 years. While this note would be executed, recorded and in effect disbursed, it would not bear interest and would only become effective at the end of the one or two year period if the dealer had not taken

the necessary number of houses to retire the loan. Let me illustrate. Let's go back to the hypothetical case used earlier. The Credit Corporation made a loan in the amount of $60,000 which we determined would be paid off through the shipment of 22 homes. A note would be signed for $3,000 for one year or $6,000 for two years. A program is opened, sales are made and the 22 houses are shipped. The note is then automatically satisfied. But, let's say that the program is opened, sales are not made or are very slow. The loan matures and only a few homes have been shipped. Then the note is collectable. Actually, it can be set up for 5% for one year with an option to renew at 10% for the second year and waiving the 5% for the first. Then, if 22 homes are shipped before the end of the second year, no penalty is administered.

Does this approach sound a little rough on the dealer? I don't think so. Remember, he helped to determine a conservative one year program of development, in this case 40 lots. But the loan is paid back in only 22 lots. All you're asking him to do is produce in two years what he said could be done in less than one. Do you see the lever that this gives you? He is more likely to push hard to sell our houses when there is a penalty if he doesn't. People like to take the line of least resistance. Before this clause was put in, a program could be opened, and start slowly. It was easy to say, "It's obviously the product, we'll go back to conventional or something else." Now a program is opened, sales start slowly and the thinking is, "Let's bring in a new model," or "Let's improve on our advertising." I think it gives us an excellent sales tool. It is not necessary for you to try to explain this to your dealer or prospect. It can be a matter of negotiation between the dealer and the Credit Corporation. I just wanted you to be aware of it.

Then another safety valve being used by the Credit Corporation is the personal guarantee of repayment of the loan by the principals. In the case of the small dealer operating as a proprietorship, this is not necessary. But most builders, today, have one or more corporations with which they operate. More often than not, when putting together a new subdivision or program, they will form a new corporation to handle it. Also, quite often, it is in effect a "paper" corporation with only $500 in assets. As the Credit Corporation puts it, "we are doing business with a piece of paper in the Secretary of State's office," and that is true as far as personal, legal responsibility is concerned. So we ask for a personal guaranty, not so much for additional financial security on the loan, but rather to hold an individual, or individuals, responsible in the event that a deal "bogs down," or "goes sour." They just can't walk away from it so easily then.

It would be good practice for you to ask the dealer or prospect if personal guaranties would be available and to report this fact in your request. It could be the determining factor in making the loan.

A further safety margin is afforded the Credit Corporation if security in addition to the number of lots to be developed can be put into the mortgage. Let's say that the aforementioned 40 lots are platted, approved and recorded, and that's what we're basing our program on; but additionally, the dealer owns 20 acres adjoining the project. By all means, get this 20 acres into the mortgage. It enhances the security, reduces exposure and gives you, psychologically, at least, a lock on the additional acreage for your houses.

So, to recap, a standard land deal means simply—up to 60% of the combined cost of land and development or if the dealer owns the land, 100% of the development cost.

This on a one or two year basis at ½ of 1% fee plus 6% interest. Loan to be paid back in 75% or fewer of the lots to be developed dependent upon a release value per lot based usually on the estimated average valuation anticipated from FHA or VA. It's simple, isn't it?

Now, let's consider a variation or two that we might still class as standard. Let's assume, in one instance, that the dealer has bought the ground, make a down payment and title has been conveyed to him, subject to a mortgage held by the seller. In many cases, we have been able to get the seller to subordinate his mortgage to a first mortgage held by the Credit Corporation. Simply, the Credit Corporation holds a first mortgage and the seller holds a second mortgage. They could then, all other things being equal, come in for all of the development costs, and still have a standard deal.

Another way that they might agree to lend a little more than the standard amount would be through the use of a prior sales requirement high enough to pay off the loan. Let's say, for example, that the total cost of acquisition and development is $100,000 on 40 lots and the dealer needs $75,000. He might get the model home lots approved, open a sales program, set up a release value of $3,500 per lot, and upon receipt of 21+ sales, pay off the ground and develop the lots. The Credit Corporation's pay back is then more or less assured.

The best approach, for the time being at least, if you feel that a request deviates too much from the standard program, is to advise Stan Mack, who will go through the necessary channels to have one of us contact the dealer with you. First, I would attempt to get it in to standard proportions; then, if it is not possible to do that, put in a special request which would go through a different process.

When the sales office receives a standard financing request, they submit it to Treasury for their check, then di-

rectly to the Credit Corporation who then can contact the dealer and negotiate the loan. But on a special deal, one of the three developmental men will submit a special memorandum request to Harry Black who will review it, put his recommendations on it and send it to Mr. Boyd. Mr. Boyd then will ask Treasury to check it for credit and financial status. When he receives their approval, he will then add his letter of recommendation and send it to the Credit Corporation. Mr. Lang and "Dick" Dyas will review it and upon tentative approval, Dyas, Bill Rollins or Bill Leonard will then negotiate the loan with the dealer.

The original intent of the special financing program was to allow us some freedom in trying to make a larger volume deal. In fact, at first, we talked only of those programs of 100 or more homes per year. We have since broadened this considerably, however, we should still stay pretty closely with the standard program on anything less than 25 units per year.

It is always best, if possible, to try to find out what the dealer requires and if possible, adjust our program to meet his needs, rather than to "lay-out" a set of rules which might not fit and might cause the dealer or prospect to lose interest. Further, you might say to him that we would go up to 60% and he only requires 40 or 50%, in which case, he might try to get 60%. If you are penned down to a definite answer, you might then just spell out the standard terms and then tell him, "if this doesn't fit your program, you tell us what is needed and we'll see what can be done". You should make it clear to a new or prospective dealer who is applying for his first loan from the Credit Corporation that they will not consider lending 100% of the security. That is, the dealer must have some equity in one form or another in the deal. Always point out too, that after we have good experience with each other it will not be difficult to nego-

tiate a much "longer" deal with the Credit Corporation. Experience is the strongest word in their language.

There have been a good number of special loans made in the past three years, each one a little different, but each one with some merit. Conversely, in some cases the Credit Corporation turned down what seemed to be a good real estate loan, but didn't look as though it would produce home shipments. I know of one case where there was a choice piece of ground, in an excellent location, supported by a strong market. The requested loan was to be guaranteed by a multi-million dollar corporation. From a pure real estate investment standpoint, it was excellent. However, we chose not to recommend the loan to the Credit Corporation because we couldn't see a full time qualified general manager or anyone in the organization with the ability or the time to merchandise our homes. In other words, I just didn't see how we would get very many houses shipped. Sure, the loan was secure, and the Credit Corporation would be paid back, but we wouldn't accomplish our only purpose in making the loan and that is shipping houses. That's why the Credit Corporation exists and that should be our first consideration before requesting financing assistance.

Now, as to a straight land acquisition loan, it will nearly always be tied in with a development program. Just to help acquire real estate and hold it for a future market is not the purpose of the Credit Corporation. Certainly, there are exceptions, even though rare. The exception might be the well-established existing dealer with a successful, going program who has an opportunity to acquire land for future use at a favorable price. The standard program here is 50-50 or matching dollars with the dealer.

There may be situations where the dealer can buy a block of fully developed lots in a subdivision. This would be classed as a land acquisition loan and again the standard would apply. That is, up to 50% of the acquisition cost to the dealer. This, of course, would differ from a land in-

ventory loan in that the lots would be ready for immediate use.

Remember that the first consideration of the Sales Department before requesting any type of financing assistance is the commercial value of the program to the Homes Division. Financing is simply one of several tools that we have available for securing more business. Don't waste your time with a lot of insignificant deals that don't have much chance for any appreciable volume. Let's concentrate on the hundreds of good, qualified builders who could and would use our products and services if they only know about them.

EXAMPLE

Now, let's take a hypothetical case—parts of which we have been discussing—and tie it down into one complete program, filling out the financial assistance request and completing the submission.

This is a new dealer just being franchised. He has 40 undeveloped lots, FHA approved, with his final subdivision report back from FHA. He has clear title to the 40 lots and has title to 20 additional acres adjoining that are subject to a mortgage to the seller. The engineer has estimated $1,500 per lot for improvements and the ground cost was $1,000 per lot. He is dealing with ABC Mortgage Co., an approved FHA lender and FNMA approved seller, but whose investors will not now make prior commitments for a group of loans.

We have checked the market and have determined that the wage categories, the location and the market needs call for houses in the $13,000 to $16,000 range. Construction money is available locally but is costing 1½ points plus interest.

So we set up a request for a "standby" commitment in the amount of $600,000. The total maximum sales price x 40 units would be $640,000. But this is for permanent mort-

gage money so the $600,000 will be more than ample. It's a 203b program so 30 year terms are requested. The minimum price acceptable will be current FNMA prices. Desired source is the Credit Corporation and local market conditions show that prior commitments are not presently available.

For construction financing, the dealer wants 85% of appraised value so we use the highest anticipated sales price. We have 40 lots @ 85% of $16,000 for a total amount of $544,000.

Then we have the 40 lots to be developed. The cost of the land was $40,000 and @ $1,500 per lot for development, the loan amount requested is $60,000. Under the block labeled "Type of Improvement for Above Lots Only", you will break it down as to streets, curb and gutters, sewer, water, etc. showing estimated cost for each amount in place, if any, and remaining work in dollars and cents. Or you may attach an engineer's estimate sheet.

Then complete the Project Information Section showing 40 lots plus 20 acres—40 lots covered by this request and they are owned free and clear.

The subdivision is locally approved and recorded and has formal approval from FHA. FHA Conditionals are applied for and no sales contracts have been made. In the box labeled "Firm Mortgage Commitments on Hand, "simply write, "as per Section A." The "Status of Utilities, etc. "would show utilities and streets to be installed.

On the back side on the top line write, "as per Section C" and on the next line "as per Section B."

The estimated cost of the average lot is $2,500 and valuation is $2,800. The lots will sell at the FHA valuation.

Now, show the models to be offered and the prices along with estimated costs. Then estimate the date for opening and the date for shipping the first houses, along with estimated completion date for the program.

The next box shows the conditions, trends, etc. in the market. Here, write in what we discussed earlier as to wages, location, etc. Then put your recommendations in the next box, sign it, date it, include the necessary exhibits, send it to Stan and you're in business.

Include the following exhibits:

1. Financing statement not over 90 days old (unless current statement is in Treasury files).
2. Plat of subdivision with recording information if possible.
3. Map of area, locating the subdivision.
4. Engineer's cost estimate for development.
5. Photos of typical surrounding homes. (Not necessary, but helpful.)
6. Your cover memorandum giving background information of dealership and principals, the project and why it is potentially good, then your recommendation.
7. Copy of Prospective Dealer Contact Report.

Of course, the above case was easy; in fact, about perfect, but it illustrates the way a standard deal should be handled. The more cases you submit the more you'll learn about it. Just stick to the fundamentals for now and don't commit yourselves to anything and you'll get by.

Stan asked me to cover something about setting up accounts, servicing, etc. A year or two ago, I wrote and presented some material on this, and it still applies. Many of you have copies of this material, but I have copies here for those who don't. I think we'll quickly run over this, then have a question session after which we'll have a written exam on material covered since Monday.

3/27/61
df

PLAINTIFF'S EXHIBIT 242

June 6, 1962

Mr. D. H. Boyd — President
W. L. Lieber — Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

Three home orders were received from Fortner Enterprises during the month of May and the three were shipped in the same month. The present backlog of home orders is zero.

The following table reflects the monthly order activity:

1960	Orders Received	Orders Shipped
November	4	3
December	1	1
1961		
January	6	1
February	–	3
March	–	1
April	1	3
May	13	5
June	6	8
July	4	7
August	2	5
September	7	4
October	13	8
November	–	8
December	2	2
1962		
January	4	1
February	2	3
March	1	3
April	1	1
May	3	3
	70	70

Eight of these houses are being used as models and three are known to be spec houses. The actual number of spec

Plaintiff's Exhibit 242

houses now on hand is unknown because of some lost sales. Four closings were completed during May for a grand total of 50.

Although sales have slowed down considerably, the accounts with both the Credit Corporation and the Homes Division are in a current status.

WLL:ng

PLAINTIFF'S EXHIBIT 243

May 8, 1962

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

Activity during the month of April was very low. Only one home order was received and it was shipped, leaving no back log of orders on hand. Through April, a total of 67 homes have been shipped to Golden Meadows Subdivision. There were 186 available lots in the Subdivision leaving 119 lots remaining to be built on.

The exhibition house has been moved to the Subdivision and is being used as a model. The dealer now has a total of 8 models and 3 spec houses.

Five closings were completed in the month of April for a grand total of 46 closings. Thus far, 82% of sales have been closed to permanent mortgages.

The accounts with both the Credit Corporation and the Homes Division are current and satisfactory.

WLL:ng

PLAINTIFF'S EXHIBIT 244

April 6, 1962

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

The subject dealer has produced only seven home shipments during the first quarter of 1962. During the month of March two home orders were received, three were shipped, and the back-log is zero. One of the March shipments was made to the Louisville Homebuilders Show for display by the dealer. After it has served its purpose at the exhibition, it will be moved to a lot in Golden Meadows Subdivision and offered for sale.

In addition to the Home Show house, the dealer has seven other models being shown in his subdivision. He also has three speculative houses.

There was only one loan closing completed in March for a total of forty-one since the beginning of the project. Sixty-two percent of total shipments have been closed to permanent mortgages.

Although sales are much slower than had been anticipated, the account appears to be satisfactory. The accounts with both the Credit Corporation and the Homes Division are current.

WLL:ng

PLAINTIFF'S EXHIBIT 245

March 5, 1962

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

Only one home order was received from the subject dealer during the month of February. Three home shipments were made leaving a backlog of one unshipped home at month end. Over the past four months only seven home orders have been received. This could be due to the recent holiday season and the inclement weather.

This dealer still has the seven models, which he is trying to dispose of, and three speculative houses. We have not yet shipped to his proposed new model home area.

There were no closings completed in February. To date there have been 40 closings—36 under the Credit Corporation's loan and 4 under another arrangement prior to the conclusion of the Credit Corporation loan. Thirteen homes are sold and in the process of closing.

The account continues satisfactory from a financial viewpoint to both the Credit Corporation and the Homes Division.

WLL:ng

PLAINTIFF'S EXHIBIT 246

February 6, 1962

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

In the month of January four orders were received from the subject dealer and one was shipped. One model has been sold and the dealer now has seven models which are being shown. All remaining models are for sale and the dealer plans to erect a new model area now that all the streets have been installed. Four houses have been built on speculation.

Thirty-six sales have been closed to permanent mortgages as of January 31, 1962. Four sales were closed in January. This dealer has performed well in arranging for closings to follow sales in a reasonably short period of time. Thirteen sales are now awaiting closings.

Interest on loans by the Credit Corporation is paid promptly and the account is current and satisfactory.

There is presently a credit balance in the Homes Division's miscellaneous account and the dealer has been informed we will remit our check in payment.

WLL:ng

PLAINTIFF'S EXHIBIT 247

January 8, 1962

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

Through December 31, 1961, the subject dealer has ordered a total of 59 homes, all of which have been shipped. Eight of these homes are being used as models and four are built on speculation.

The following table reflects the monthly activity of home orders:

	Orders Received	Orders Shipped
1960		
November	4	3
December	1	1
1961		
January	6	1
February	–	3
March	–	1
April	1	3
May	13	5
June	6	8
July	4	7
August	2	5
September	7	4
October	13	8
November	–	8
December	2	2
1962		
January	4	1
February	2	3
March	1	3
April	1	1
May	3	3
	70	70

Plaintiff's Exhibit 247

With the exception of the models and the speculative homes, all orders represent firm sales. At the close of the year there were 47 sales of which 32 have been closed to permanent mortgages.

Under the first loan agreement, one note covering land acquisition in the amount of $88,000 due the Credit Corporation, matured on December 31, 1961. The note has been extended to June 1, 1962. There are approximately 40 lots remaining in this particular area.

The Credit Corporation is satisfied with the performance of this dealer and interest on all obligations is paid to date.

The Homes Division's accounts are current and relations with the dealer are excellent.

WLL:ng

PLAINTIFF'S EXHIBIT 248

December 11, 1961

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

At November 30, 1961, the backlog of unshipped orders was reduced to zero. Eight home shipments were made during the month of November but no new orders were received. One home order received in September was cancelled because the order was duplicated in October.

From November 1, 1960 to November 30, 1961, this account has produced 57 home orders, all of which have been shipped. Seven of the homes are being used as models and four are built on a speculative basis.

There have been 25 loan closings under the Credit Corporation's first loan agreement and 3 under the second loan agreement. Sales under the second loan agreement have

Plaintiff's Exhibit 248

not been generated as quickly as had been anticipated. This loan was consummated on August 2, 1961 and only 3 sales have resulted. With the unfavorable building weather coming on and with the holiday season approaching, this trend will probably not reverse itself for a few months. It is known that this dealer has 2 sales ahead at this time.

Both the Credit Corporation's and the Homes Division's accounts are satisfactory. Interest on the loans by the Credit Corporation is paid up to date and the Homes Division's miscellaneous account is current. A portion of the miscellaneous account is now past due but credits are being processed by the Order Service Division to balance the account.

WLL:ng

PLAINTIFF'S EXHIBIT 249

November 7, 1961

Mr. D. H. Boyd—President
W. L. Lieber—Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

During the month of October we received a total of 13 orders from the subject dealer and shipped 8. Since November of 1960 we have received a total of 58 orders, of which 49 have been shipped, leaving a total of 9 unshipped orders on hand at October 31, 1961.

The following table shows the monthly order activity:

1960	Orders Received	Orders Shipped
November	4	3
December	1	1
1961		
January	6	1
February	–	3
March	–	1
April	1	3
May	13	5
June	6	8
July	4	7
August	2	5
September	7	4
October	13	8
November	–	8
	57	57

Five houses are being used as models and are attractively furnished. Four houses have been erected on a speculative basis and the Credit Corporation is now allowing the dealer to rotate on six speculative houses at a time.

Plaintiff's Exhibit 249

To date, 23 cases have been closed to permanent mortgages. The dealer has been outstanding in arranging for loan closings to closely follow completions. This would indicate a good organization and costs are minimized through lower interest charges.

Under the first loan, which comprises approximately 142 lots, 46 houses have been created and 21 have been closed. Under the Credit Corporation's second loan, which comprises 32 lots which are adjacent to those under the first loan, 3 houses have been erected and 2 have been closed. The note covering the first loan matures December 31, 1961, but the Credit Corporation is agreeable to extending it at that time due to their confidence in the dealer. The notes covering the second loan mature December 31, 1962.

The Homes Division accounts are current and the dealer is cooperative in every respect.

WLL:ng

PLAINTIFF'S EXHIBIT 250

October 4, 1961

Mr. D. H. Boyd—President
W. L. Lieber—Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

Through September 30, 1961, we have received a total of 45 home orders from the subject dealer and 41 have been shipped, leaving 4 unshipped orders on hand. Five of these homes are being used as models. The models are furnished and staffed.

Thus far, 15 cases have been closed to permanent mortgages through Louisville Mortgage Service Company.

The Credit Corporation is allowing the dealer to rotate on 3 speculative houses at any one time. They now have

two speculative houses erected. The Credit Corporation has disbursed on 30 cases under the first loan agreement and on 3 cases under the second agreement.

The dealer is performing very satisfactorily in the opinion of the Credit Corporation. They are active, cooperative and dependable. Interest payments have been made when due. However, at their present pace, they will not build out the first section in time to retire the note due December 31, 1961. The Credit Corporation is willing to extend the note at that time because of the business-like fashion in which they conduct their operation.

They are known to have a few sales ahead, but, since buyer approval is first cleared by Louisville Mortgage Service Company, the exact figure is unknown.

The Homes Division accounts with Fortner are satisfactory and a good relationship exists.

WLL:ng

PLAINTIFF'S EXHIBIT 251

August 29, 1961

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

The Credit Corporation consummated the second loan to the subject dealership on August 2, 1961. The loan consists of $59,000 for land acquisition and $403,400 for construction funds. The loan is secured by three notes due December 31, 1962.

Five houses are actively being used for models, and one has been approved by the Credit Corporation for speculative purposes. The Credit Corporation has disbursed on 26 cases and 9 have been closed to permanent mortgages. The

permanent mortgages is the Louisville Mortgage Service Company.

All shipments, except the six mentioned above, represent prior sales. The delays in closing are due to the absence of a blanket FHA commitment. Each case is investigated individually.

The following table reflects the activity of shipments thus far:

1960	Orders Received	Orders Shipped
November	4	3
December	1	1
1961		
January	6	1
February	–	3
March	–	1
April	1	3
May	13	5
June	6	8
July	4	7
August	2	5
September	8	4
	45	41

The experience of the Credit Corporation, and the Homes Division, in their transactions with this dealer has been satisfactory.

PLAINTIFF'S EXHIBIT 252

July 27, 1961

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

The first loan made to the subject dealership by the Credit Corporation was consummated on October 28, 1960. The land acquisition loan is secured by two notes. One note in the amount of $88,000 matures on December 31, 1961, and the second in the amount of $231,920 matures on December 31, 1962. The construction loan on 187 lots is also secured by two notes. One note in the amount of $373,200 matures on December 31, 1961, and the second note in the amount of $1,362,180 matures on December 31, 1962.

The first shipments made to this project, known as Golden Meadows Subdivision, were five models beginning on November 22, 1960. Since that time, thirty additional orders have been received and all but four have been shipped. The date of the last order received was July 20, 1961 and the last shipment was on July 25.

The five models are still being used for display purposes. The Credit Corporation has disbursed on seventeen cases, including the five models. Four cases thus far have been closed to permanent mortgages.

The second loan has not yet been completely consummated. The Credit Corporation is awaiting certain documents from Fortner and no exceptional delay is anticipated.

The account with the Homes Division is current and satisfactory, and the Credit Corporation reports a good relationship.

WLL:ng

PLAINTIFF'S EXHIBIT C-23

UNITED STATES STEEL CORPORATION
Office of Administrative Vice President
and Treasurer

January 12, 1960

Mr. R. C. Dyas

Fortner Enterprises
Louisville, Kentucky

The Fortner loan on the new basis is an extreme. Once again, we have all the money in before many houses are built and we then are dependent upon (a) the sales market which exists; (b) the ability of the customer to make a satisfactory return etc. This means that to the best of our ability, we should try to find out as many facts as possible. Is the product which we intend erecting there competitive, comparable, reasonable, desirable for the area? Does a sales market exist in this price range? Are business conditions such that there probably are enough qualified buyers?

With regard to (b) above, we should know, if possible, or at least have confidence that the dealer can make a satisfactory profit from the use of our product. With all of our money out front, he has very little incentive to finish off a project. If his profits are not adequate or are not comparable to his prior experience, then we probably do not have a good loan. In making this statement, it is not the financial risk aspects which are referred to, but rather the fact that the loan will not produce house sales. The worst thing that can happen—and perhaps we have it at Broyhill—is an unsuccessful development. This precludes, in most cases, any other house sales in that area, because the one we have there has been unsuccessful.

W. H. Lang

PLAINTIFF'S EXHIBIT C-24

[LETTERHEAD OF UNITED STATES STEEL HOMES]

Inter-Office Memorandum

September 22, 1960

To: W. L. Rollins, Asst. General Manager—Credit Corporation

From: H. R. Black, General Manager—Sales

Subject: Fortne Enterprises, Inc.

Dear Bill:

Attached is a resubmission of the original request on behalf of Fortner Enterprises, Inc., Louisville, Kentucky. I believe the attached memorandum by Mr. Day and the letter by Mr. Fortner clearly explains the situation as of this date.

Although this was in the category of special financing I have mentioned it to Mr. Boyd and whereas we are simply requesting a reactivation of an original commitment by the Credit Corporation which had been recommended by Mr. Boyd and others concerned, it is hoped that the Credit Corporation is in a position to make a direct contact.

Maybe the time element in this program has worked in our favor since we now have commitments in hand covering the 31 lots in question and if a financing situation can be consummated this would appear to be our fastest entry into the fall market in Louisville and possibly winter and spring building.

I realize that you desire to have Dick review this program with you once again and if it is possible we hope this can be accomplished during the week of September 26. I will be in New Albany on September 28 and 29 and if I can

Plaintiff's Exhibit C-24

be of any help I will be happy to meet with you and Dick and Fortner, if necessary.

Thanks for your consideration in this matter.

HRB/mlp

cc: W. L. Lieber
D. H. Boyd

DEFENDANT'S EXHIBIT 4

September 19, 1960

Mr. Neil G. Day
Manager—Field Sales
United States Steel Homes, Div.
Charlestown Road
New Albany, Indiana

Dear Mr. Day:

As per your suggestion, I am very happy to bring you up to date on the status of Golden Meadows Subdivision, and perhaps fill you in on what has transpired, since the negotiation of our first agreement, to cause what must have seemed to be unnecessary delays.

As you know, the subject subdivision has been owned by Iroquois Developers, Inc., with equal shares held by Mr. William RoBards and myself. Originally, Mr. RoBards agreed to sell all of his interest in Iroquois to Fortner Enterprises, Inc., which company is totally owned by me.

At the time I requested financial assistance in purchasing Mr. RoBards' interest and developing the lots, there was no question as to Mr. Robards intent. Then, for some reason, he suddenly refused to sell. I did not and do not feel that the two of us together could successfully launch and carry out a building program. So when Mr. RoBards flatly refused to sell, I had but one choice and that was to offer to sell my interest to him. This he agreed to do if he could obtain financing from your Credit Corporation.

Defendant's Exhibit 4

For reasons best known to yourselves, your Company has rejected his request. So once again, we are at a standstill.

After several discussions with Mr. RoBards, he has finally and definitely agreed to sell his interest on the original basis agreed upon and to conduct his operations elsewhere.

I realize that you, Mr. Black and your Credit Corporation must feel, by now, that we can't make up our minds and that we don't know what we want to do. This, I assure you, has never been the case with me.

After visiting your plant and reviewing your 1961 models, I am more convinced than ever that we can develop a very successful and mutually profitable program in Golden Meadows.

We have 31 lots, fully developed, with FHA Commitments in hand on your models. We would plan a very extensive advertising and promotion campaign to get the program started as well as a continuing campaign throughout the year. Our builder, Mr. Miles, who is thoroughly experienced in tract building, has the organization for volume production and is also ready to start when we give him the go ahead.

I, therefore, request that you reactivate my original request on the same basis as was finally agreed upon with your Credit Corporation, and do whatever you can to expedite it. We have everything else ready to go.

Let me add my personal thanks to you, Paul, Mr. Black and the Credit Corporation for your patience and cooperation during the past months, and we certainly look forward to a long and profitable relationship.

Yours very truly,

A. B. Fortner,
President

ABF:rs
Copy to:
Mr. Paul Grayson

DEFENDANT'S EXHIBIT 6

[LETTERHEAD OF ZETTWOCH FORTNER CORP.]

January 5, 1962

Mr. Neal Day
United States Steel
New Albany, Indiana

Dear Neal:

Earl told me in your meeting with him and Miles last Tuesday, that you turned us down on our request for assistance in showing a model home at the Fairgrounds in the forth coming Home Show. You also mentioned, that your company has gone into shopping centers with models, and the experience was sad. Neal, I can well understand that; remember that people flock to Shopping Center openings, and all the promotion is for the Center itself, and the people are interested in seeing the shopping center, and winning some of the fabulous prizes given away for visiting the various stores. Second, Shopping Centers are usually built in, or around new subdivisions, where the majority of the people have already bought new homes.

I want to list below some of the reasons that I wish you and Stan would take into consideration, and review our case.

1. We are in a position where it is imperative that we sell 150 homes during 1962, which will amount to $1,800,000.00.
2. Our advertising budget based on the volume above will be $36,000.00.
3. Where else can we expose our homes to as many people, and better contacts than the Louisville Home Show. We need a "gimmick"—and believe this is it.

Defendant's Exhibit 6

4. Our biggest and nea[illegible]petitor, Ben Swindler has sold well over a hun[illegible]d homes this past year, and I think everyone that will compare his home at $11,875 with our B-1 at $11,400 will agree that we have the superior house for less money. Mr. Swindler had a home in the Home Show in 1961, and is going back in 1962. According to my information from the National Association of Home Builders, 18 homes were sold the week of the home Show last year, and that Mr. Swindler was forced to send his salesmen from the Home Show to his subdivision, as people were going from the Home Show to the Subdivision.
5. It is our contention, that the people visiting the Home Show are people that are definitely interested in Homes, and the class of people that buy, either directly or indirectly in the $11,000 to $13,000 bracket.
6. We have in our organization, twenty-five salesmen, and by dividing their time between the Home Show and the Subdivision we can handle far more prospects than any of our competitors; and if each salesman can sell one house in addition to leads for future sales, we would have the momentum to carry us through 62, and meet our quota.
7. We have discussed this with a number of our Subcontractors, and they are very much interested, and will co-operate fully.
8. We will also have a number of our station wagons at the Fairgrounds, and operate a Courtesy-Car Service from Fairgrounds to Subdivision and return for those who would like to see our full line of homes and the location.

Defendant's Exhibit 6

9. We will furnish, decorate, sold and shrub our home in a manner that will best sell the price home we are offering, and feel sure that no one can match the Home for the same amount of money.
10. We will furnish all literature, floor plans and all the selling aids necessary, including signs, favors, etc.
11. Now we are getting down to the cost. Construction, dismantling, and moving house to subdivision; various loses, such as ceiling and floors which no doubt would be complete loss to us. As for labor, we could keep that to a minimum, by using our foremens, and possibly a couple of your product service men. Our heating plant and plumbing can be installed and taken out at no cost.

We would purchase the package, pay for it on our present plan, or a special plan as you would decide; handle everything mentioned above, plus keeping a cleaning person on the job.

Your participation would be $4000.00.

We feel that if you and Stan were acquainted with the Louisville Home Show, as Miles, Earl and myself are, you would not hesitate to go into this project with the most enthusiasm and confidence.

Yours truly,

(s) A. B. Fortner, Jr

AF/ef

DEFENDANT'S EXHIBIT 17

March 28, 1961

Mr. A. B. Fortner, Jr.
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

Dear Mr. Fortner:

We have completed the scheduling of our advertising support for your U. S. Steel Homes Spring Promotion for the week end of May 14, 1961.

The local outdoor advertising representative should have contacted you for placement of your three junior outdoor panels; and the television station manager and newspaper representative will call you soon.

It is important that you work out your own advertising schedule to coincide with our support program, and these representatives can help you.

We have attached newspaper mats ("See the home you'll want to come home to" illustrations and "USS Homes" signatures) that your newspaper can insert in your ads. The attached suggested layouts show you how to make maximum use of this material. Remember, you can double the impact of your ads by using the "house" symbol and USS signature in your layouts.

When your television and newspaper representatives call on you, suggest that they give your "opening" news coverage; and be sure that they have all the facts and dates so that they can write their stories accurately and easily.

Our advertising support schedule is:

Outdoor: 3 junior outdoor panels, starting May 1

Newspaper: *Courier Journal Times* (M and E) one 300-line ad Friday, May 12 two 200-line ads Saturday, May 13

Defendant's Exhibit 17

Television: Station WAVE-TV—four 10-sec. ID's

The imprint for the billboard and newspaper advertising will read: Fortner Enterprises, Inc., at Golden Meadows.

Again, our best wishes to you and to your Golden Meadows development.

Sincerely,
Stanley J. Mack
Manager of Sales Development

sjm/ph
cc: P. Grayson
F. Clements

DEFENDANT'S EXHIBIT 20

[LETTERHEAD OF UNITED STATES STEEL HOMES]

Sept. 30, 1961

To: Charles Schultz, Manager, Product Service Division
From: M. R. Morsillon, Product Service Representative
Subject: 1962 Model Homes Shipped to Fortner Enterprises, Inc.

Registered Home No. 62250	Registered Home No. 62253
Model B-1 (1962 Model)	Model B-1 (1962 Model)
Date 9/25/61	Date 9/26/61

Both of the above registered Homes were ordered to be 1962 Models. The first one (Reg. Home No. 62250) was delivered on 9/26/61. I went to Golden Meadows to deliver material to correct a shipping error on the morning of 9/26/61 and found the crew erecting the home. Exterior walls were up and they were ready to install trusses.

Mr. Earl Smith, in charge of sales in the sub-division, was quite disturbed because of the changes in the 1962

Homes from the 1961 models as their FHA Commitments were for 1961 models and both homes had been sold from the 1961 Model B-1 Home in the project. Mr. Smith contacted Mr. Miles and they decided to let Mr. Fortner decide what should be done.

Mr. Fortner's decision was that all Model B-1 Homes already sold would have to be 1961 models in exterior and interior panel arrangements.

Erection of exterior walls and trusses had been completed so the home was left that way until the necessary panels to make the change could be procured. I phoned the plant and told George Rosenbarger of the problem. We worked out the number of panels and material needed to make the change. Our Company truck delivered the necessary parts to change both homes on 9/27/61.

I helped them make the change on Reg. Home No. 62250. This operation was not too difficult.

Reg. Home No. 62253 was erected on 9/28/61 and of course caused no trouble as the necessary parts were there to convert the home to a 1961 model.

Mr. H. Miles orders Homes for Golden Meadows and this mix up was due to his ordering 1962 model homes when 1961 models were the homes needed.

Grayson

DEFENDANT'S EXHIBIT 21

[LETTERHEAD OF UNITED STATES STEEL HOMES]

Sept. 30, 1961

To: Charles Schultz, Manager, Product Service Division
From: M. R. Moreillon, Product Service Representative
Subject: General Report-Fortner Enterprises Inc.—
Shortages, Errors, etc.

As Product Service Representative for Fortner Enterprises, Inc., I have spent quite a bit of time trying to get

their operation going smoothly and to show them how to handle shortages, errors and damages according to Company Policy.

It has been an uphill job and although they have been told again and again they still continue to handle shortages, errors and damages as they see fit.

Mr. H. Miles understands what should be done in each case but he has been unable to get Mr. Bob Robinson, contractor erecting the homes, to do as he should.

Even though Mr. Miles knows that Robinson is careless in the handling of material, he seems to stick by him when it comes to damaged material due to careless handling and if Robinson reports shortages which could easily be attributed to pilferage. (They have experienced considerable losses due to pilferage.)

I have personally taken Mr. Miles to homes they have under construction—enclosed with materials stored inside—and showed him the materials that were thrown inside in a jumbled mess. Mr. Miles always agrees that Robinson should take better care of things and generally has him straighten things up when the crew can get to it.

This does not occur on every home erected but the crew gets in a hurry and repeat this error too often.

I have talked with Robinson and explained the danger of damages to material such as kitchen cabinets. His standard excuse is that he isn't making enough on the homes to do other than he does.

Mr. Miles has always tried to hide the true facts of Robinson's shortcomings from Mr. Fortner.

Mr. Earl Smith constantly complains to me about the quality of workmanship and careless handling of materials.

Naturally we have had some shipping errors and shortages and I have checked and had corrections made on each one found.

Defendant's Exhibit 21

A check of MSO shipments to this dealer will show that I have hauled many of them to the subdivision.

Whenever I found a shortage or error it has always been my policy to get the necessary material to the job before it was needed and could cause the erection crew any delay.

During the past week several families have moved in their homes in Golden Meadows. I have been there when owners came into the office there with long lists of things to be completed (or corrected). I went with Mr. Smith to one of the homes because one of the items on the owners' list was the complaint concerning a chipped kitchen sink bowl. This was in Registered Home No. 61819—Model B-1, Date 7/14/61.

The owner told Mr. Smith that the bowl was Chipped when he moved in. Of course this damage will cost the dealer because the home was shipped in July and had it been shipping damage the time has long passed for reporting it as such.

I could not help but notice that openings for heat registers in the floor had been cut about ¾" too long leaving that much that the register wouldn't cover. There was also several bad scratches and dents in the hardwood floor that had been there when the floor was finished.

Things of this nature are to be found in many of the homes that are presumably ready for occupancy according to Mr. Smith.

It is taking a lot of time and costing money to correct such things that should have been done right when the job was originally done.

Mr. Robinson is trying to do the job without adequate help and whenever a home is to be turned over to the owner there is a mad scramble to finish it and make necessary corrections at the last minute.

Defendant's Exhibit 21

Many owners are moving in before corrections are made and then start complaining to Mr. Smith. I don't think that Mr. Fortner is aware of the existing conditions and the men he has out on the job are doing their best to keep him from finding out.

Grayson—Day

DEFENDANT'S EXHIBIT 23

[LETTERHEAD OF UNITED STATES STEEL HOMES]

April 23, 1962

To: Stanley J. Mack, Manager-Dealer Sales

From: M. R. Moreillon, Sales Representative

Subject: F.H.A. 3rd Inspections in Golden Meadows Project

Dealer: Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

Homes: Plan 710 (B-23)
Constance Drive
Lot # 48
Model Home
B-11 (Fortners New Orleans Model)
Jacqueline Way
Lot # 192
Model Home

Mr. Ed Akers directed me to go to the Golden Meadows Project this morning to investigate reported trouble with Steel Folding Closet Doors. I was aware that two homes had been turned down by F.H.A. and understood that one of the main reasons was that closet doors were not operating properly.

Mr. Earl Smith, Sales Manager for Fortner in Golden Meadows, was at the Project when I got there and gave me

the Inspection Reports for the above homes. Both were dated, 4/17/62. Both reports were copied exactly as shown and were as follows:

Plan 710 (B-23) Lot 48 Constance Drive
Provide 8" between top of Foundation and Finish Grade.
Gable plywood covering loose on right side.
Repair concrete front stoop front left corner.
Provide two storm doors with closures as specified.
Repair bulge in drywall—Left side at Front Door.
Paint wood cleat-top of all closet doors.
Repaint lintel over Garage Door.
Paint or cover with drywall bare stud in Furnace closet—provide base shoe in Furnace closet.
Secure Furnace vent.
Storage closet door in hall doesn't open properly.
Wall to wall carpeting in rear bedroom—closet door won't open.
Heat register crooked in bath.
Fireproof wood cabinets above range.
Complete public sidewalk and sod swale.

The above was F.H.A. Case No. 20-085607—Inspector, D. A. Schuler.

B-11 (Fortners New Orleans Model) Lot # 192 Jacqueline Way
Provide storm door closures.
Repaint lintel over Garage Door.
Gable plywood siding warped and buckled on right end.
Provide splash blocks and all downspouts.
Paint 2x6 stud in furnace closet or cover with drywall and paint.
Fireproof wood cabinets over range.

Provide electrical outlet at breakfast bar as shown on plans.
Set and putty base board shoe mould.
Repair or replace cracked sections of Public Sidewalk near driveway.
Provide ladder for attic inspections.
NOTE: Wall to wall carpeting temporarily installed throughout over asphalt tile floors—Doors do not swing over carpeting as installed.

The above was F.H.A. Case # 20-085661—Inspector, D. A. Schuler.

The F.H.A. Inspectors reports were copied directly from both copies of his report and that includes the note shown at the bottom of the Model B-11 home.

I checked all Steel Folding Doors in the B-11 home and adjusted them upward to compensate for the added thickness of carpeting where it was used. All doors were operating satisfactorily after adjustment.

It was impossible to adjust the closet door in the rear bedroom in the plan 710 home as the carpeting there is too thick to allow satisfactory adjustment to be made. I adjusted upward as far as possible and the door still drags slightly on the rug. The two foot hall closet door was jumping from the track. I checked and found that the screw holding the bottom pivot plock had not been properly tightened and the block was loose, this door was put in good operating condition by properly securing the pivot block. All other closet doors were found to be in good operating condition.

Mr. George Coleman is the F.H.A. Inspector that usually makes inspection in the Golden Meadows Project but he is on vacation now and Mr. D. A. Schuler is taking the job over in the absence of Mr. Coleman.

c.c. H. R. Black Ed Akers Paul Grayson

DEFENDANT'S EXHIBIT 24

February 8, 1962

File

C. L. Schultz, Jr., Manager-Product Service Division
Home Owner Complaint—Robert Crowley
Fortner Enterprises #61713-1—B-144

The above home owner (with American Airlines) visited the plant during the week ending February 3 and discussed a number of problems concerning his home with Messrs. H. R. Black and E. L. Akers.

The writer inspected his home on Tuesday, February 6, with Mr. Earl Smith of the dealership.

The following complaints were brought to our attention as follows:

1. Difficult to heat family room and kitchen area. The heating system is designed and installed by the dealer's heating sub-contractor and consequently does not correspond with our heating layout. The furnace is a Bryant. Under the circumstances, it was difficult to take or recommend any positive action; however, from observation, it appeared that the thermostat was short cycling and its location on the outside of the furnace room should be changed; the blower speed reduced slightly and adjusted for more continuous circulation of air and the ducts balanced in an effort to throw more air toward the cold areas which are the longer runs from the furnace—crawl space system.

   A condensation problem exists which might be helped by more continuous circulation of air and the installation of a fresh air intake might be desirable. Will give Earl Smith fresh air intake duct at Product Service expense in an effort to assist with this phase

of problem. Heating man to come back in and balance and adjust furnace and heating system.

2. Exterior door stops split where storm door latch keeper installed. We must furnish longer screw with all latches. Dealer will replace stops.
3. Front door—solid core French Provincial. Warpage at top no doubt aggravated by excessive moisture in home. Door did not latch properly and striker plate should be adjusted. Probably as a result of door not closing properly and being forced over a period of time, plus the weight of the solid core door itself, the jamb on the hinge side slightly split and both jamb and door should be replaced when weather warms up.
4. Mark-27 range not fitting properly in top cut-out, merely pushed it back into proper position; however, left-hand chrome rim sprung or distorted. Will have G.E. replace it, although probably damaged by men installing unit.
5. Baseboard problem. Some irregularity in partition installation resulted in difficulty installing baseboard tight to wall. As a result, it was caulked and the caulking has cracked plus some movement which is undoubtedly minor floor joist shrinkage during this first heating season. Baseboard should be renailed in places, recaulked and repainted.
6. Windows with black mildew. The front picture window has some evidence of this but naturally so with condensation running a steady stream of water down the window and resting in puddles on the muntins and sill.
7. Drywall and interior paint job. Drywall build-up at taped joints visible and owner not satisfied with inexpensive paint application.

8. Rain water blows or runs into garage from patio through 3'-0" x 6'-8" rear service door. Earl Smith advised owner that they normally pour concrete door sill higher than patio but owner insisted at time of erection that patio and garage floor be on same level. An oak threshold was supposedly glued to concrete beneath door but was loose and water probably running underneath of it. Question the use of such an installation and a standard metal threshold lead-anchored into concrete and caulked should be installed.

The above essentially covers the complaints brought to our attention. There are other things which the writer observed but which were not subjects of complaint. The hardwood flooring and finishing thereof is very poor. This is no doubt the result of applying hardwood directly to floor joists without the use of subfloor. Consequently, the floor takes a beating from the time it is installed until the home is completed and is apparently treated as if it were rough subflooring. The finishing was bad and appeared to have been done in cold weather when the material used (appeared to be shellac) would not brush out or flow smoothly or the applicator made no attempt to brush it out evenly.

To sum up, the overall condition of the home may be characterized as one containing marginal workmanship, inside and out, from the erection itself through all other subcontract work. Good workmanship is difficult to find but obviously it must be acceptable to the area since houses are being sold and FHA is accepting them.

To resolve the problem to the owner's complete satisfaction may be difficult. It is understood that initially he lived in the home three months before making final closing

due to other unsatisfactory conditions. Mr. Crowley indicated that he was so dissatisfied with the "cheap" paint job on the interior that he intended to re-do it himself in the spring. With this thought in mind, perhaps the best approach to the nearest solution possible would be to perform some baseboard and drywall repair, replace the front door, stops and jambs, and supply a fresh air intake for the furnace providing, of course, that he will do the necessary repainting.

Mr. M. R. Moreillon has been concerned for sometime with the negligent and careless workmanship and handling of materials prevalent throughout the project. The writer can appreciate his problem and if this sort of thing continues, it may eventually adversely affect both sales and the reputation of the Fortner Company and United States Steel Homes Division. On the other hand, it is realized that the sales prices on the homes are low and attractive to prospective buyers and perhaps they do not expect any more than they are getting. The workmanship is not good and any slow down in sales over the next few months may very well be the direct result.

It is felt that Mr. A. B. Fortner himself may not be fully informed or cognizant of all the facts and the many reoccuring problems, which have existed to date. Perhaps it is advisable to discuss them with him at this time.

CLS:cam

cc: Messrs. H. R. Black, Paul B. Grayson and
M. R. Moreillon

DEFENDANT'S EXHIBIT 107

Dec. 22, 1959

Mr. Harry R. Black, General Manager-Sales
N. G. Day, Manager-Field Sales
Request for Special Financial Assistance—
Fortner Enterprises

Dealer and Borrower

Fortner Enterprises is a proposed new borrower operating in the Louisville, Kentucky area. This is a corporation solely owned by Mr. A. B. Fortner, Jr., President of Zettwoch Fortner Corporation, which company is actively engaged in home building, land development and the real estate business. Fortner Enterprises is presently an inactive corporation with limited assets. They propose, however, to transfer assets from another corporation, to Fortner Enterprises. These assets will consist of 96 undeveloped lots and 3 developed lots with a total value of approximately $112,000 and a liability of $56,000 which represents one-half of the land value.

Mr. Fortner, along with another individual, has been building in a project known as Golden Meadow Subdivision, and to date has completed 250 homes in the $10,000 to $15,900 class. The value and quality is excellent.

We have been in contact with Mr. Fortner and his associates for the past three weeks. They have attended one of our seminars, visited our plant, and are presently assembling cost figures on our product.

Mr. Fortner has been in the real estate and development business since 1939, and is very highly regarded in Louisville. Built personally about 75 homes—has mostly developed ground for "captive" builders, and merchandised and sold the homes on about 4,000 lots.

Defendant's Exhibit 107

Project and Location

The project is just off Dixie Highway, approximately eleven miles from downtown Louisville. Immediately served by large shopping area, schools and transportation. It is very well situated with fast access to downtown Louisville.

The land in question totals 99 lots—96 undeveloped and 3 developed. This is presently owned by Iroquois Development, Inc., of which Mr. Fortner owns a one-half interest. It will be necessary for Mr. Fortner to purchase the remaining one-half interest in the corporation in order to transfer title to the borrowing corporation.

In addition to the aforementioned land, Mr. Fortner is optioning an adjoining 90 acre tract for future development and probable construction of our homes. It is planned to build homes in the $10,000 to $11,500 class. It is estimated that FHA value on the lots will be approximately $2,200.

Financing

Final figures for cost of development have not yet been established. Based on past experience of the developer, the figures are very close to accurate. A release value equal to FHA valuation of the lots was suggested by the Dealer. Current valuations are approximately $2,200 per lot.

Estimated Breakdown

96 Lots @ $1,100	$105,600
3 Lots @ $2,100	6,300
Total	$111,900
Cost to develop 96 Lots @ $1,000	96,000
Total Land and Development	$207,900
Borrower's equity in land	55,950
NET REQUIRED	$151,950

The area is partially surrounded by new homes, and all the necessary utilities are to the site. The suggested $2,200 release value would pay back the entire loan over the first 69 lots. The 99 home sales would be considered as a year's program or less.

It is planned to erect 3 models on the three improved lots as soon as FHA conditionals are received, and a sales program opened at that time.

It is acknowledged that their request for financing is definitely in the category of special financing, but there are many advantageous features which, I feel, make this program possible, and I would recommend your consideration.

Recommendation of General Manager—Sales

It is the recommendation of the Sales Department that this request be forwarded to the Credit Corporation for their consideration in granting the necessary financing to establish this new program.

In addition to Mr. Day's and Mr. Grayson's examination of this prospective dealer, I too have had the opportunity to discuss this program in full with the principals as well as our own fieldmen, and find that from a commercial view point, the program is most desirable. Although in discussing a program such as this, we make every effort to avoid complete details of the financing, it is natural that some figures are suggested by the dealer, and these we pass on purely as a guide for what we think it will take to establish the program. It is evident that models could be erected possibly within the next thirty to sixty days, and a sales program opened at that time. This, of course, would be most beneficial because the Louisville area can accomplish winter building without too much difficulty.

This new dealership will not interfere with the program which we are currently working on with Town & Country

Homes. It is approximately fifteen miles away from Town & Country's contemplated project and in an entirely different section of the city. Fortner's program will be in the $11,000 to $13,000 price range whereas Town & Country Homes will be in the $15,000 to $20,000 price range.

There is attached a copy of credit information which I have discussed with Mr. Kestner today. Mr. Kestner is making an immediate check of the bank and trade references and is also ordering a Dun and Bradstreet report. This information should be available through Mr. Kestner's office no later than Monday, December 28.

The Sales Department would appreciate the opportunity of meeting with the Credit Corporation and the dealer to discuss this program as soon as possible.

The franchise has been signed by the builder, and this along with an operating statement of the borrower will be available to the Credit Corporation at the time of their discussion with Fortner Enterprises.

(s) Harry R. Black
General Manager-Sales

FORTNER ENTERPRISES—Franchise Applicant
Zettwoch Fortner Corporation
4125 South Third
Louisville, Kentucky
A. R. Fortner, Jr.-Principal
Request Dun and Bradstreet report on above.

BANK REFERENCES

First National Bank of Louisville
16 South Fifth Street
Louisville, Kentucky

Citizens Fidelity Bank & Trust Co.
437 West Jefferson
Louisville, Kentucky

Defendant's Exhibit 107

TRADE REFERENCES

The Louisville Home Supply Co.
3720 Seventh Street Road
Louisville, Kentucky

Standard Auto Co.
728 South Fourth Street
Louisville, Kentucky

Louisville Mortgage Service Co.
215 South Fifth Street
Louisville, Kentucky

DEFENDANT'S EXHIBIT 124

[LETTERHEAD OF EMPIRE HOMES CORPORATION]

October 18, 1962

Mr. A. B. Fortner, Jr., President
Fortner Enterprises, Inc.
4125 South Third Street
Louisville 14, Kentucky

Dear Sir:

We are pleased to quote you the following price on the Beacon Elevation N:

Basic Package Price (Delivered)..... $2,614.52

The above price does not include Kentucky Sales Tax.

The above package price will be fabricated in accordance with and include the following:

1. Exterior Walls: Factory-built room panels for 8′ ceiling height consisting of 2″ x 4″ studs 16″ O.C. with single 2″ x 4″ bottom plate and double 2″ x 4″ top plate, all to be kiln dried Construction and Standard Western Hemlock. ½″ insulating sheathing factory applied to exterior wall. Anderson Wood Working Company wood windows factory installed according to plan, flashed and complete with sash lifts and locks. 2″ fiberglass insulation factory applied in sidewall panels. ½″ sheetrock applied to inside of panels, but not taped or finished.

Defendant's Exhibit 124

2. Exterior Doors: Entrance 3′ x 6′8″ door per plan. Rear door 2′8″ x 6′8″ x 1¾″ Douglas Fir panelled 3 lite per plans. Doors prehung in jamb assembly, complete with trim factory installed locks, weatherstripping on aluminum thresholds with plastic all weather sealer. Pilaster assembly furnished.
3. Exterior Trim: All exterior finishing lumber such as gutter, rake, and frieze board, ⅜″ A.C. plywood soffit, quarter round and aluminum soffit vents furnished for field installation. All exterior trim to have one coat white pigemented sealer factory applied.
4. Roof Structure: Factory built clear span roof trusses 4½ pitch for spacing 24″ O.C., constructed of kiln-dried 2″ x 4″ Yellow Pine, 1500 P.S.I. top cord, 1200 P.S.I. bottom cord, with metal connector plates as per attached detail. ⅜″ C.D. plywood roof sheathing and 15″ roof felt furnished.
5. Gable Ends: Factory-built in one piece, constructed of kiln dried 2″ x 4″ spaced 16″ O.C. with ⅜″ primed plastic overlay plywood applied.
6. Interior Partitions: Factory-built room partitions for 8″ ceiling height consisting of 2″ x 4″ studs spaced 16″ O.C. single top and bottom plate all to be kiln dried Construction and Standard Western Hemlock. ½″ sheetrock applied to both sides of partitions, but not taped or finished.
7. Interior Doors: 1⅜″ flush Birch veneered with Manufacturers S.S.S. finish, prehung in jamb assembly complete with trim applied to one side, and

with factory installed locks. Closet doors to be metal bifold as indicated on plan.

8. Additional Materials Furnished:
   a. Wood closet shelves and shelf support.
   b. Wood closet pole.
   c. Screened aluminum ventilators for soffit.
   d. Aluminum full bound window screens.
   e. Combination wood storm and screen door.
   f. Lantern type light fixture for front.
   g. 1—#1500 Lawson medicine cabinet.
   h. 6—chrome bath fixtures.
   i. Wood kitchen cabinets with sink and trim—these are without built in range per drawing 1200 111 50.
   j. Wood windows shutters per plan.
   k. Wood base, window and door trim (Window and door trim mitered.)
   l. Ceiling drywall, and tape for ceiling and walls.
   m. #235 roof shingles.
   n. All nails, hardware, blocking and spacers necessary to erect Empire Homes components.
   o. All windows, exterior and interior trim to have one coat white pigemented primer factory applied.

We certainly appreciate the opportunity of quoting you on this house. I would like to state, that in addition to the high quality materials which go into our homes, w also have available the services of field engineers and a registered architect to assure your success.

Respectfully submitted,

Empire Homes Corporation,
(s) E. P. Graas
Vice President

EPG/jf

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GOF 8 1-9
Rev. 6-58

(USS) UNITED STATES STEEL HOMES
Division of
United States Steel Corporation

FOR USSH USE ONLY
Dealer No. 944
Dated 10/31/60

DEALER FRANCHISE

United States Steel Homes Division, United States Steel Corporation, of Pittsburgh, Pennsylvania, herein called "Company."

and

Fortner Enterprises, Inc. Proposed Dealership Name			Check one: ☐ Individual
4123 South Third Street Street			☐ Partnership
Louisville, Kentucky City State			☒ Corporation
Jefferson County	EM 8-1676 Day Phone	WO 9-7401 Night Phone	Kentucky State of Incorporation

herein called "Dealer", hereby agree as follows:

1. Dealer submits to Company herewith:
   (a) Current Financial Statement of Dealership and, if appropriate, of the principals, and/or any affiliated or subsidiary organizations,

2. Company grants to Dealer a non-exclusive franchise, on the conditions set forth below, to purchase products described in Company's Residential Product Manual, herein called "Company Products", for use in erecting residential structures within the following territory:

Golden Meadows Subdivision and an area within a five mile radius thereof.

3. Dealer shall furnish the necessary facilities and personnel, shall use Dealer's best efforts to promote, sell, and service such structures within such territory, and shall incorporate and use in their erection Company Products in accordance with Company's plans and specifications. Dealer shall use recognized accounting methods and shall furnish to Company such financial and other information concerning Dealer's operations hereunder as Company may from time to time reasonably request.

4. Company will make available to Dealer for purchase at Company's prices in effect at time of shipment, such Company Products as are then being offered for sale by Company in that section of the country in which Dealer's territory is located, provided that all such purchases shall be made on Company's Conditions of Sale, as set forth in its applicable purchase order forms then in effect, and Company will use its best efforts, in the absence of excusable delays, to furnish said Company Products to Dealer. Dealer shall make such arrangements for payment as Company shall from time to time require. Company reserves the right to make improvements or other changes in its Company Products at any time and without notice to Dealer, and Company cannot guarantee that Company Products shipped will, in any particular, conform to Company's advertising or descriptive material or models issued or in circulation.

5. Company shall indemnify Dealer for Damages recovered by a third person in legal proceedings for infringement of U. S. Letters Patent by products manufactured by Company and furnished hereunder, provided that Dealer promptly notifies Company of the claimed infringement, permits Company to assume the defense thereof if it so elects, and cooperates with Company in such defense.

6. Dealer shall not use any distinctive portion of Company's name or any trade-mark or trade name adopted by Company in the name under which Dealer conducts any business, except as authorized by Company in dealing in and advertising Company Products. Dealer shall not contest the validity of any copyright, trade-mark, trade name or patent owned by or licensed to Company, or contest Company's right to use exclusively any trade-mark or trade name at any time adopted by Company.

7. Dealer is an independent contractor and not an agent of Company. Dealer shall not purport to act as Company's agent or commit Company in any manner whatsoever.

8. (a) Dealer may terminate this Agreement at any time by written notice to Company.

(b) Company may terminate this Agreement by written notice to Dealer:

(1) at any time by giving not less than 6 months' advance notice to Dealer; or

(2) upon 30 days' advance notice to Dealer after any 12 consecutive calendar months during which Dealer fails to purchase from Company a minimum of $100,000.00 worth of Company Products; or

(3) at any time after 6 consecutive calendar months during which Dealer has not accepted and paid for one complete Home Package Shipment; or

(4) at any time if Dealer assigns this Agreement without Company's written consent; or

(5) after default by Dealer in the performance of any provision of this Agreement and Dealer's failure to remedy such default within 30 days following written notice to Dealer by Company of such default.

(c) Principals in Proposed Dealership: (List principal parties; if a corporation, list officers; if a partnership, list all partners.)

	Name	Position	Age
(1)	A. B. Fortner, Jr.	President	45
(2)	Ruth L. Fortner	Vice President	45
(3)	Edna Herberman	Secretary	55
(4)			

If any such person shall withdraw from such position without written consent of Company, Company may terminate this Agreement at any time thereafter upon 30 days' written notice to Dealer.

9. Termination of this Agreement cancels all unfilled orders for Company Products, but such termination shall not be waived if Company thereafter ships an order at Dealer's request to avoid imposing hardship on one of Dealer's customers. Termination of this Agreement shall not release Dealer from his obligation to pay moneys due or to become due to Company or to complete any other unfilled obligation under this or any other contract. Upon termination, Dealer will immediately cease advertising Company Products and using Company's name, trademarks, trade names, and advertising and promotional material in any manner whatsoever.

10. This Agreement is the sole and entire dealer franchise agreement between the parties, superseding any and all others. No modification of this Agreement shall be binding unless made in writing and signed by Dealer and Company. Any notice required to be given in writing by either party hereunder shall be delivered by deposit in the registered or certified mail, addressed to the last known business address of the other party. This Agreement and any modification thereof and any written notice or consent required to be given hereunder by Company shall not bind Company unless signed by a Company officer.

If Dealer is a Corporation, President or Vice President must sign. If a Partnership, all partners must sign. If a Sole Proprietorship, the proprietor must sign. Indicate title of each signer.

Proposed Dealership Name—Fortner Enterprises, Inc.

By A. B. Fortner, Jr.
Title—President

By
Title

By
Title

Dealer's General Manager will be: A. B. Fortner, Jr.

DEALER: DO NOT WRITE BELOW THIS LINE

Execution of Dealer Franchise by Company is recommended:

Paul B. Grayson
Sales Representative

H. R. Black
Sales Manager

W. L. Lieber, Jr.
Treasury Department

Upon execution below, this Dealer Franchise becomes binding upon Company:

UNITED STATES STEEL HOMES DIVISION

By

D. H. Boyd
President

• • • • • • • •

FINANCIAL STATEMENT—December 31, 1958

PRICE WATERHOUSE & CO.
56 Pine Street
New York 5
February 24, 1959

To the Board of Directors
U. S. Steel Homes Credit Corporation

In our opinion, the accompanying financial statements present fairly the financial position of U. S. Steel Homes Credit Corporation at December 31, 1958 and the results of its operations for the year, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Our examination of these statements was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

(s) Price Waterhouse & Co.

Financial Statement—December 31, 1958

U. S. STEEL HOMES CREDIT CORPORATION
(a wholly owned subsidiary of
United States Steel Corporation)

BALANCE SHEET

	December 31, 1958	December 31, 1957
Assets		
Cash	$ 190,696	$ 567,532
Construction and land development loans to builders, secured by mortgages	1,369,405	1,954,583
Advances on mortgages on homes under construction	319,250	104,587
Warehouse Agreement loans	1,016,452	532,876
Estimated federal income taxes recoverable under carry-back claim	40,494	
Other receivables	27,303	30,492
Federal National Mortgage Association stock	5,331	31,155
	2,778,235	2,653,693
Less—Reserves	28,513	28,513
	2,749,722	2,625,180
Individual home mortgages	114,330	3,935,151
	$3,054,748	$7,127,863
Liabilities and net worth		
Demand loans payable to banks	$ 953,000	$5,000,000
Note payable to United States Steel Corporation (subordinated to bank loans)	1,000,000	1,000,000
Accounts payable and accrued liabilities	6,993	32,747
Accrued taxes	4,224	4,302
	1,964,217	6,037,049

	December 31, 1958	December 31, 1957
Capital stock and accumulated income:		
Capital stock:		
Authorized—50,000 shares of $100 par value Issued and outstanding—10,000 shares	1,000,000	1,000,000
Accumulated income, per attached statement	90,531	90,814
	1,090,531	1,090,814
	$3,054,748	$7,127,863

NOTES TO FINANCIAL STATEMENTS

At December 31, 1958 the corporation had commitments to purchase mortgages or to make additional loans up to approximately $10,039,737.

The corporation's parent company has agreed that, upon request, it will purchase an additional 10,000 shares of the corporation's capital stock at par and lend the corporation an additional $1,000,000, such loan to be subordinated to bank loans.

U. S. STEEL HOMES CREDIT CORPORATION
(a wholly owned subsidiary of United States Steel Corporation)

STATEMENT OF INCOME

	1958	1957
Income:		
Loan fees	$ 27,209	$ 144,384
Interest	184,347	435,601
	211,556	579,985
Expenses:		
General and administrative expenses	85,682	128,675
Mortgage servicing fees	6,017	21,106
Interest on loans payable	59,557	280,782
	151,256	430,563
Excess of income over expenses	60,300	149,422
Net loss on sales of mortgages	101,077	184,694
Loss before federal income tax credit	(40,777)	(35,272)
Estimated federal income taxes recoverable under carry-back claims	40,494	
Net loss for the year	(283)	(35,272)
Accumulated income at beginning of year	90,814	126,086
Accumulated income at end of year	$ 90,531	$ 90,814

FINANCIAL STATEMENT—December 31, 1959

PRICE WATERHOUSE & CO.
56 Pine Street
New York 5

February 23, 1960

To the Board of Directors
U. S. Steel Homes Credit Corporation

In our opinion, the accompanying financial statements present fairly the financial position of U. S. Steel Homes Credit Corporation at December 31, 1959 and the results of its operations for the year, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Our examination of these statements was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

(s) Price Waterhouse & Co.

Financial Statement—December 31, 1959

U. S. STEEL HOMES CREDIT CORPORATION
(a wholly owned subsidiary of
United States Steel Corporation)

BALANCE SHEET

	December 31, 1959	December 31, 1958
Assets		
Cash	$ 234,319	$ 190,696
Construction loans to builders, secured by mortgages	2,147,875	961,789
Land development and financing loans, secured by mortgages	2,438,131	257,616
Advances on mortgages on homes under construction	295,279	319,250
Warehouse Agreement loans	1,634,422	1,016,452
Individual home mortgages	131,130	114,330
Other loans	153,053	150,000
Federal National Mortgage Association stock	5,329	5,331
	6,805,219	2,824,768
Less—Reserves	28,513	28,513
	6,776,706	2,796,255
Estimated federal income taxes recoverable under carry-back claims	21,783	40,494
Interest and other receivables	61,071	27,303
	82,854	67,797
	$7,093,879	$3,054,748

Financial Statement—December 31, 1959

Liabilities and net worth		
Short-term notes payable to banks	$3,500,000	
Demand notes payable to banks	1,350,000	$ 953,000
Note payable to United States Steel Corporation (subordinated to bank loans)	1,000,000	1,000,000
Accrued interest and other payables	105,955	6,993
Accrued taxes	20,671	4,224
	5,976,626	1,964,217
Capital stock and accumulated income:		
Capital stock:		
Authorized—50,000 shares of $100 par value Issued and outstanding—10,000 shares	1,000,000	1,000,000
Accumulated income, per attached statement	117,253	90,531
	1,117,253	1,090,531
	$7,093,879	$3,054,748

NOTES TO FINANCIAL STATEMENTS

At December 31, 1959 the corporation had commitments to purchase mortgages or to make additional loans up to approximately $21,000,000.

The corporation's parent company has agreed that upon request, it will purchase an additional 10,000 shares of the corporation's capital stock at par and lend the corporation an additional $1,000,000, such loan to be subordinated to bank loans.

Financial Statement—December 31, 1959

U. S. STEEL HOMES CREDIT CORPORATION
(a wholly owned subsidiary of United States Steel Corporation)

STATEMENT OF INCOME

	1959	1958
Income:		
Interest	$ 198,876	$ 184,347
Loan fees	40,842	27,209
	239,718	211,556
Expenses:		
Interest on loans payable	133,767	59,557
General and administrative expenses	59,585	85,682
Mortgage servicing fees	3,487	6,017
	196,839	151,256
Excess of income over expenses	42,879	60,300
Net profit (loss) on sales of mortgages	342	(101,077)
Profit (loss) before federal income tax	43,221	(40,777)
Provision for federal income taxes	16,499	
Estimated federal income taxes recoverable under carry-back claims		40,494
Net profit (loss) for the year	26,722	(283)
Accumulated income at beginning of year	90,531	90,814
Accumulated income at end of year	$ 117,253	$ 90,531

FINANCIAL STATEMENTS—December 31, 1961

PRICE WATERHOUSE & CO.
56 Pine Street
New York 5

February 27, 1962

To the Board of Directors
U. S. Steel Homes Credit Corporation

In our opinion, the accompanying financial statements present fairly the financial portion of U. S. Steel Homes Credit Corporation at December 31, 1961 and the results of its operations for the year, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Our examination of these statements was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

(s) Price Waterhouse & Co.

Financial Statements—December 31, 1961

U. S. STEEL HOMES CREDIT CORPORATION
(a wholly owned subsidiary of
United States Steel Corporation)

BALANCE SHEET

	December 31, 1961	December 31, 1960
Assets		
Cash	$ 373,374	$ 287,638
Construction loans to builders, secured by mortgages	3,669,305	4,817,911
Land development and financing loans, secured by mortgages	5,917,748	5,371,955
Advances on mortgages on homes under construction	167,966	379,978
Warehouse Agreement loans	4,042,126	4,294,494
Individual home mortgages	92,511	116,029
Other loans	167,175	222,793
Federal National Mortgage Association stock	5,007	5,007
	14,061,838	15,208,167
Less—Reserves	299,264	128,263
	13,762,574	15,079,904
Interest and other receivables	279,459	146,102
	$14,415,407	$15,513,644
Liabilities and net worth		
Demand notes payable to banks	$12,000,000	$13,125,000
Note payable to United States Steel Corporation (subordinated to bank loans)	1,000,000	1,000,000
Accrued interest and other payables	131,909	171,155
Accrued taxes	54,995	48,039
	13,186,904	14,344,194

	December 31, 1961	December 31, 1960
Capital stock and accumulated income:		
Capital stock:		
Authorized—100,000 shares at December 31, 1961 and 50,000 shares at December 31, 1960; $100 par value Issued and outstanding—10,000 shares.....	1,000,000	1,000,000
Accumulated income, per attached statement	228,503	169,450
	1,228,503	1,169,450
	$14,415,407	$15,513,644

NOTES TO FINANCIAL STATEMENTS

At December 31, 1961 the corporation had commitments to purchase mortgages or to make additional loans up to approximately $37,000,000.

The corporation's parent company has agreed that upon request, it will purchase an additional 90,000 shares of the corporation's capital stock at par and lend the corporation an additional $29,000,000, such loan to be subordinated to bank loans.

U. S. STEEL HOMES CREDIT CORPORATION
(a wholly owned subsidiary of United States Steel Corporation)

STATEMENT OF INCOME AND ACCUMULATED INCOME

	December 31, 1961	December 31, 1960
Income:		
Interest	$ 862,426	$ 656,523
Loan fees	109,850	120,629
	972,276	777,152
Expenses:		
Interest on loans payable.....	621,200	515,000
General and administrative expenses.....	69,403	65,404
Provision for bad debts.....	171,000	99,750
Provision for federal income taxes.....	51,620	44,801
	913,223	724,955
Net profit for the year.....	59,053	52,197
Accumulated income at beginning of year....	169,450	117,253
Accumulated income at end of year.....	$ 228,503	$ 169,450

ANSWERS TO INTERROGATORIES ON BEHALF OF UNITED STATES STEEL CORPORATION

Affiant, after being duly sworn, states that his name is Harry R. Black, that he is Vice President-Operations of United States Steel Corporation (Homes Division) and that the following answers to certain interrogatories propounded to United States Steel Corporation are true to the best of his information and belief.

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8. Separately for each of the years 1957 through 1962 give the following:

a. Each State in which United States Steel Corporation or any of its divisions sold component parts for prefabricated homes.

b. For each such State give the dollar volume of sales of component parts for prefabricated homes and prefabricated homes.

c. For each such State give the number of packages of component parts for prefabricated homes sold.

For each of the years 1957 through 1962 (to September 30), each state to which United States Steel Homes Division, United States Steel Corporation shipped home packages, the dollar volume of such shipments to each such state, and the number of home packages shipped to each such state are set forth in the attached list marked "Attachment to Answer to Interrogatories 8a, 8b and 8c."

9. Separately for each of the years 1957 through 1962 give the following:

b. The dollar volume of sales of prefabricated houses and component parts for prefabricated houses sold in Jefferson County, Kentucky.

For each of the years 1957 through 1962 (to September 30) the dollar amount of United States Steel Homes Division's shipments of home packages to Jefferson County, Kentucky were as follows:

Year	Amount
1957	$ 60,178
1958	12,277
1959	—0—
1960	28,567
1961	262,959
1962 (to September 30)	237,333

9. Separately for each of the years 1957 through 1962 give the following:

c. The name and address of each individual or organization to whom prefabricated houses or component parts for prefabricated houses were sold in Jefferson County, Kentucky.

(1) Give the number of packages of component parts for prefabricated houses, and prefabricated houses, sold to each such person or organization.

(2) Give the dollar value of sales of prefabricated houses or component parts for prefabricated houses sold to each such person or organization.

For each of the years 1957 through 1962 (to September 30), the name and address of each individual or organization in Jefferson County, Kentucky to whom home packages were sold by United States Steel Homes Division, United States Steel Corporation, the number of packages sold to each, and the dollar volume of such sales, are set forth in the attached list marked "Attachment to Answer to Interrogatories 9c, 9c(1) and 9c(2)."

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ATTACHMENT TO ANSWER TO INTERROGATORIES 8a, 8b and 8c

United States Rural Home Division

RECIPIENTS OF HOME INCOME

	1960		1961		9 months 1962		1957		1958		1959	
	Recipients	Amount	Recipients	Amount	Recipients	Amount	Recipients	Amount	Recipients	Amount	Recipients	Amount
	17	64,580	8	30,948	13	54,537		0		0		0
Alabama	. .	. .	1	5,329	. .	. .	. .	. .	. .	5,167	. .	. .
Arkansas	2	10,231	. .	. .	. .	9,518	. .	. .	1	. .	. .	2,727
California	5	11,469	2	8,643	1	3,814	. .	464,313	2	252,198	50	197,280
Colorado	. .	. .	1	3,678	. .	. .	1	1,900	1	7,975	. .	. .
Connecticut	. .	. .	. .	. .	. .	. .	. .	. .	. .	. .	. .	. .
Delaware	2	20,128	43	189,604	59	212,765	116	1,261,255	125	5,167	31	125,024
Florida	1	744,958	150	628,375	124	501,644	1	1,155,737	125	402,374	167	64,781
Georgia	1	133,597	32	153,184	4	18,788	1	593,132	135	435,845	37	146,484
Illinois	2	221,436	88	334,996	93	379,105	. .	. .	130	385,902	. .	. .
Indiana	3	157,977	113	454,306	63	243,696	1	19,582	. .	. .	. .	. .
Iowa	2	45,880	19	81,997	14	63,222	1	154,844	10	31,481	7	27,216
Kansas	4	18,805	7	27,880	8	38,421	1	49,038	18	57,453	7	22,349
Kentucky	1	34,505	3	13,791	.	.	1	34,888	7	23,487	3	11,750
Maine	1	264,851	11	46,391	4	15,680	1	174,274	8	17,889	.	.
Maryland	1	34,301	16	80,149	12,247	1	149,723	36	114,949	11	45,197	
Massachusetts	1	4,053	23	96,085	7	17,711	1	13,439	10	31,864	.	.
Michigan	2	11,810	7	9,696	.	.	1	208,507	1	5,167	30	118,049
Minnesota	1	31,348	18	78,235	4	4,066	1	4,533	18	57,567	7	25,967
Mississippi	1	73,320	10	33,202	1	2,395	1	43,244	1	4,483	1	4,066
Missouri	1	134,196	12	53,443	1	22,000	1	102,152	27	27,466	9	37,618
Montana	1	34,997	1	56,018	1	15,135	1	120,654	17	92,582	5	19,270
Nebraska	3	3,483,295	3	3,962	.	.	.	.	.	55,430	2	85,023
New Hampshire	1	28,851	659	2,312,452	1,284,083	1	3,240,369	381	1,221,434	11	1,641,735	
New Jersey	7	167,330	7	14,853	.	.	.	.	.	11,984	.	.
New York	1	68,531	58	238,993	135,321	1	542,641	4	445,321	31	127,172	
North Dakota	1	71,130	10	35,089	6,843	.	.	.	.	.	1	3,911
Ohio	.	.	.	.	.	.	.	.	.	.	.	.
Oklahoma	1	86,086	1	3,905	3,744	1	5,167	1	5,167	4	14,675
Oregon	3,916	20	81,301	318,776	1	237,805	1	5,047	23	176,645	
Pennsylvania	22	16,406	14,229	1	107,776	1	70,159	23	113,140		
South Dakota	14,777	1	106,892	33	18,270							
Tennessee	1	5,342	5									
Texas												
Vermont												
Virginia												
West Virginia												
Wisconsin												

Attachment to Answer to Interrogatories 9c, 9c(1), and 9c(2)

SALES OF HOME PACKAGES BY UNITED STATES STEEL HOMES DIVISION

TO PURCHASERS IN JEFFERSON COUNTY, KENTUCKY

	1957		1958		1959		1960		1961		Jan. thru May, 1962	
	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount
The Eagles Company 4406 Shelbyville Road Louisville, Kentucky	3	$12,630	-	-	-	-	-	-	7	$25,879	43	$167,481
Town & Country Homes 1112 E. Broadway Louisville, Kentucky	10	47,548	2	$12,261	-	-	-	-	4	18,588	5	26,439
The O. K. Company, Inc. 8516 Preston Highway Louisville, Kentucky	-	-	-	-	-	-	3	$10,423	7	29,490	-	-
Portner Enterprises 4123 South 3rd Street Louisville, Kentucky	-	-	-	-	-	-	4	14,723	55	189,002	13	43,413
A. W. Brunt Co. Center Building Louisville, Kentucky	-	-	-	-	-	-	1	3,421	-	-	-	-